

8

United States
Circuit Court of Appeals
For the Ninth Circuit.

LEE CHOY,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Territory of Hawaii.

FILED

AUG 2 - 1923

W. D. HONINGTON,
CLERK.

United States
Circuit Court of Appeals
For the Ninth Circuit.

LEE CHOY,

Plaintiff in Error,

VS.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Territory of Hawaii.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Assignment of Errors.....	25
Certificate of Clerk U. S. District Court to Transcript of Record.....	528
Charge to the Jury.....	513
Charge to the Jury (Instructions Refused)..	45
Citation on Writ of Error.....	35
Defendant's Requested Instructions.....	52
Indictment	12
Motion for New Trial.....	16
Names and Addresses of Attorneys of Record..	1
Notice of Presentation of Petition for Writ of Error and Supersedeas and Bail.....	21
Order Allowing Writ of Error and Admitting Defendant to Bail	31
Order Extending Time to and Including May 26, 1923, to Prepare and Transmit Record.	6
Order Extending Time to and Including June 19, 1923, to Prepare and Transmit Record.	8
Order Extending Time to and Including June 30, 1923, to Prepare and Transmit Record.	9
Petition for Writ of Error and Supersedeas and Bail	22

Index.	Page
Recognizance	41
Recognizance for Costs	37
Sentence	18
Statement of Clerk	1
Stipulation Extending Time to and Including March 31, 1923, for Perfecting Appeal..	3
Stipulation Extending Time to and Including April 30, 1923, for Perfecting Appeal....	5
Stipulation Re Original Transcript of Testi- mony	10
TESTIMONY ON BEHALF OF THE GOV- ERNMENT:	
ALAPA, EUNICE C.	67
Cross-examination	86
Redirect Examination	136
Recross-examination	140
AYLETT, MRS. MARIE J.	140
Cross-examination	142
Redirect Examination	145
BAIROS, M. B.	63
Cross-examination	66
KAMIHARA, YASUHEI	189
Cross-examination	204
KAN, EN YOU (In Rebuttal).....	456
Cross-examination	458
Redirect Examination	461
Recross-examination	462
MATSUDA, S. (In Rebuttal).....	462
Cross-examination	475
Redirect Examination	506
Recross-examination	507

TESTIMONY ON BEHALF OF THE GOVERNMENT—Continued:

McDUFFIE, ARTHUR	146
Cross-examination	151
RICHARDSON, W. K.	155
Cross-examination	157
Redirect Examination	157
Recross-examination	158
STEVENSON, C. T.	187
Cross-examination	189
WELLS, W. K.	159
Cross-examination	167
Redirect Examination	186
Recross-examination	186

TESTIMONY ON BEHALF OF DEFENDANT:

ALLEN, WILLIAM D.	445
Recalled	454
CHOY, LEE	350
Cross-examination ..	375
In Surrebuttal	512
CHUCK, LEE (In Surrebuttal).....	507
Cross-examination	510
KAMIHARA, YASUHEI (Recalled)....	437
Cross-examination	438
Redirect Examination	442
LUM, YOU	324
Cross-examination	329
Redirect Examination	340

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANT—Continued:	
RICHARDSON, W. K. (Recalled).....	342
Cross-examination	344
SEE, MRS. TOM LEE.....	294
Cross-examination	301
Redirect Examination	307
Recross-examination	308
Redirect Examination	308
STEVENSON, W. T. (Recalled).....	453
TAI, SUI CHIN.....	235
Cross-examination	247
Redirect Examination	262
Recross-examination	262
TIM, WON	308
Cross-examination	315
WAI, HOON	263
Cross-examination	271
WELLS, WILLIAM (Recalled).....	449
Cross-examination	452
Redirect Examination	452
Transcript of Testimony	62
Trial (Continued)	232
Verdict	15
Writ of Error	32

Names and Addresses of Attorneys of Record.

For LEE CHOY, Plaintiff in Error:

Messrs. THOMPSON, CATHCART & UL-
RICH, 2-15 Campbell Block, Honolulu,
T. H.

For THE UNITED STATES OF AMERICA, De-
fendant in Error:

W. T. CARDEN, Esq., United States District
Attorney, for the Territory of Hawaii.

FRED. PATTERSON, Esq., Assistant United
States District Attorney, for the Territory
of Hawaii. [1*]

In the United States District Court, for the Terri-
tory of Hawaii.

CRIMINAL No. 3259.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

LEE CHOY,

Defendant.

Statement of Clerk.

TIME OF COMMENCEMENT OF SUIT:

October 21, 1922. Indictment for violation of
the Act of February 9, 1909, as amended by the Act
approved January 17, 1914, as amended by the Act
of May 26, 1922, as charged in Count I, and Viola-

*Page-number appearing at foot of page of original certified Tran-
script of Record.

tion of Section I of the Act approved December 17, 1914, as amended by Section 1006 of the Revenue Act of 1918, re-enacted by Section 1005 of the Revenue Act of 1921, as charged in Count II.

NAMES OF ORIGINAL PARTIES:

United States of America, plaintiff, and Lee Choy, Defendant.

DATES OF FILING OF PLEADINGS:

October 21, 1922: Indictment.

December 9, 1922: Motion for a New Trial.

DECISIONS:

December 9, 1922: Decision filed and entered. De-Bolt, Judge.

PETITION FOR WRIT OF ERROR:

December 12, 1922: Petition for writ of error, etc., filed.

December 19, 1922: Order allowing writ of error, etc., filed. [2]

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties thereto; the several dates when respective pleadings were filed and the time when the decision herein was rendered and the Judge rendering same, in the cause, United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal Number 3259,

in the United States District Court for the Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12th day of June, A. D. 1923.

[Seal]

WM. L. ROSA,

Clerk U. S. District Court, Territory of Hawaii.

[3]

In the District Court of the United States, for the Territory of Hawaii. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error. Stipulation. Filed January 17, 1923. Wm. L. Rosa, Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Plaintiff in Error. [4]

In the District Court of the United States for the Territory of Hawaii.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error.

**Stipulation Extending Time to and Including
March 31, 1923, for Perfecting Appeal.**

IT IS HEREBY STIPULATED AND AGREED by and between W. T. Carden, United States District Attorney, and Thompson, Cathcart

& Ulrich, counsel for the defendant-plaintiff in error herein, that said defendant-plaintiff in error, may have up to and including the 31st day of March, A. D. 1923, within which to perfect his appeal in the above-entitled cause.

Dated at Honolulu, T. H., this 17th day of January, A. D. 1923.

WILLIAM T. CARDEN,
United States District Attorney.
THOMPSON, CATHCART & ULRICH,
By J. D. FLINT.
Attorneys for Defendant-Plaintiff in Error.

Approved:

J. T. DeBOLT,
Judge, United States District Court, Territory of
Hawaii. [5]

In the United States District Court for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation. Filed Mar. 29, 1923, at 2 o'clock and 20 minutes P. M. Wm. L. Rosa, Clerk. By ———, Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Plaintiff in Error. [6]

In the United States District Court for the District of Hawaii.

CRIMINAL No. —

LEE CHOY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation Extending Time to and Including
April 30, 1923, for Perfecting Appeal.**

IT IS HEREBY STIPULATED AND AGREED by and between W. T. Carden, United States District Attorney, and Thompson, Cathcart & Ulrich, counsel for the defendant-plaintiff in error herein, that said defendant-plaintiff in error may have up to and including the 30th day of April, A. D. 1923, within which to perfect his appeal in the above-entitled cause.

Dated, Honolulu, T. H., March 29, 1923.

WILLIAM T. CARDEN,

United States Attorney.

THOMPSON, CATHCART & ULRICH,

Attorneys for Plaintiff in Error,

By J. DONOVAN FLINT.

Approved:

J. T. DeBOLT,

Judge, United States District Court. [7]

In the United States District Court for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Extending Time. Filed Apr. 30, '23, at 3 o'clock and 30 minutes P. M. Wm. L. Rosa, Clerk. By ———, Deputy Clerk. William T. Carden, U. S. District Attorney, Federal Building, Honolulu, T. H., Attorney for Defendant in Error. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Plaintiff in Error. [8]

In the United States District Court for the Territory of Hawaii.

CRIMINAL No. —.

LEE CHOY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to and Including May 26, 1923, to Prepare and Transmit Record.

Upon application of counsel for plaintiff in error above named, and just cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit,—

IT IS HEREBY ORDERED, that the plaintiff in error and the Clerk of this Court be, and they are, hereby allowed until and including the 26th

day of May, 1923, within which to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the records in the above-entitled cause on appeal.

Dated, Honolulu, T. H., this 30th day of Apr., 1923.

J. T. DeBOLT,

Judge, United States District Court.

Approved:

U. S. District Attorney.

THOMPSON, CATHCART & ULRICH,

By J. D. FLINT.

Attorneys for Plaintiff in Error. [9]

In the United States District Court for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Extending Time. Filed May 26, 1923. Wm. L. Rosa, Clerk. Wm. F. Thompson, Jr., Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Plaintiff in Error. William T. Carden, Esquire, United States District Attorney. [10]

In the United States District Court for the Territory of Hawaii.

CR. No. 3259.

LEE CHOY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to and Including June 19, 1923, to Prepare and Transmit Record.

Upon application of counsel for plaintiff in error above named, and just cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals, for the Ninth Circuit,—

IT IS HEREBY ORDERED, that the plaintiff in error and the Clerk of this Court be, and they are, hereby allowed until and including the 19th day of June, 1923, within which to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the records in the above-entitled cause on appeal.

Dated, Honolulu, T. H., this 26th day of May, 1923.

J. T. DeBOLT,

Judge, United States District Court. [11]

In the United States District Court for Territory of Hawaii. Criminal No. 3259. Lee Choy, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Extending Time. Filed June 8, '23, at 3:45 P. M. Wm. L. Rosa. William T. Carden, U. S. District Attorney, Federal Building, Honolulu, T. H., Attorney for Defendant in Error. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Plaintiff in Error. [12]

In the United States District Court for the Territory of Hawaii.

CRIMINAL Number 3259.

LEE CHOY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Order Extending Time to and Including June 30, 1923, to Prepare and Transmit Record.

Upon application of counsel for plaintiff in error above named, and just cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals, for the Ninth Circuit,—

IT IS HEREBY ORDERED, that the plaintiff in error and the Clerk of this Court be, and they are, hereby allowed until and including the 30th day of June, 1923, within which to prepare and

transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the records in the above-entitled cause on appeal.

Dated, Honolulu, T. H., this 8th day of June,
A. D. 1923.

J. T. DeBOLT,
Judge, United States District Court.

Approved:

WILLIAM T. CARDEN,
U. S. District Attorney.
THOMPSON, CATHCART & ULRICH,
By J. DONOVAN FLINT,
Attorneys for Plaintiff in Error. [13]

In the District Court of the United States for the
Territory of Hawaii.

CR. No. 3259.

LEE CHOY,

Defendant-Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Plaintiff-Defendant in Error.

Stipulation Re Original Transcript of Testimony.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto, through their respective counsel, that the original transcript of testimony herein shall be forwarded to the Circuit Court of Appeals, Ninth Circuit, in lieu of a copy thereof.

Dated at Honolulu, this 2d day of June, A. D. 1923.

WILLIAM T. CARDEN,
United States District Attorney.
THOMPSON, CATHCART & ULRICH,
By J. D. FLINT,
Attorneys for Lee Choy.

Approved this 2d day of June, A. D. 1923.

(Sgd.) J. T. DeBOLT,
Judge, U. S. District Court, Territory of Hawaii.

Filed June 2, '23, at 9 o'clock and 30 minutes
A. M. Wm. L. Rosa, Clerk. By ————, Dep-
uty Clerk. [14]

Filed Oct. 21, 1922. Wm. L. Rosa, Clerk. By
(Sgd.) Ritchie G. Rosa, Deputy Clerk.

In the United States District Court for the
Territory of Hawaii.

October Term, 1922.

No. 3259.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

LEE CHOY,
Defendant.

Indictment.**COUNT I.**

Violation of the Act of February 9, 1909, as amended by the Act approved January 17, 1924, as amended by the Act of May 26, 1922.

COUNT II.

Violation of Section I of the Act approved December 17, 1914, as amended by Section 1006 of the Revenue Act of 1918. Re-enacted by Section 1005 of the Revenue Act of 1921.

A TRUE BILL.

(Sgd.) JAMES F. FENWICK,
Foreman.

WILLIAM T. CARDEN,
United States Attorney.

I hereby order a Bench Warrant to issue forthwith on the within indictment for the arrest of the defendant therein named, bail hereby being fixed at \$——.

_____,
Judge, U. S. District Court, Territory of Hawaii.
[15]

In the United States District Court in and for the
Territory of Hawaii.
October Term, 1922.

The United States of America,
District of Hawaii,—ss.

COUNT I.

The Grand Jurors of the United States, empan-

eled, sworn and charged at the term aforesaid, of the court aforesaid, on their oaths, present that

LEE CHOY

on or about the 18th day of October, 1922, at and within the said District and within the jurisdiction of this Court, did unlawfully, fraudulently, knowingly, and feloniously receive, conceal, buy, sell and facilitate the transportation, concealment and sale of, after having been imported and brought into the United States, a certain narcotic drug, said narcotic drug then and there being a derivative and preparation of opium, to wit, 20 five-tael tins of opium, all of which said narcotic drug as he, the said Lee Choy, then and there well knew had been theretofore unlawfully imported and brought into the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(Sgd.) WILLIAM T. CARDEN,
United States Attorney. [16]

In the United States District Court in and for the
Territory of Hawaii.

October Term, 1922.

The United States of America,
District of Hawaii,—ss.

COUNT II.

The Grand Jurors of the United States, empaneled, sworn and charged at the term aforesaid, of the court aforesaid, on their oaths, present that

LEE CHOY

on or about the 18th day of October, 1922, at and within the said District and within the jurisdiction of this Court, did knowingly, unlawfully, fraudulently and feloniously purchase, sell, dispense and distribute 20 five-tael tins of opium from packages to which there was not then and there affixed the tax-paid stamp required by law, which said opium then and there was a compound, manufacture, salt, derivative and preparation of opium and was so purchased, sold, dispensed and distributed by the said Lee Choy, as aforesaid, not then and there being in the original stamped package and not being then and there taken from an original stamped package; contrary to the form of statute in such case made and provided and against the peace and dignity of the United States.

(Sgd.) WILLIAM T. CARDEN,
United States Attorney. [17]

Filed Nov. 20, 1922. Wm. L. Rosa, Clerk. By
(Sgd.) Ritchie G. Rosa, Deputy Clerk.

In the United States District Court for the Territory of Hawaii.

October Term, 1922.

No. 3259.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

Verdict.

We, the jury duly empaneled and sworn in the above-entitled cause, do hereby find the defendant Lee Choy — guilty as charged in the first count of the indictment herein.

We, the jury duly empaneled and sworn in the above-entitled cause, do hereby find the defendant Lee Choy not guilty as charged in the second count of the indictment herein.

(Sgd.) M. MACINTYRE,

Foreman.

Dated at Honolulu, this 20th day of November, A. D. 1922. [18]

In the United States District Court in and for the Territory of Hawaii. October Term, 1922. United States of America, Plaintiff, vs. Lee Choy, Defendant. Motion for New Trial. Filed Dec. 9, 1922. Wm. L. Rosa, Clerk. By (Sgd.) Ritchie G.

Rosa, Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant. [19]

In the United States District Court in and for the Territory of Hawaii.

October Term, 1922.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

LEE CHOY,
Defendant.

Motion for New Trial.

Comes now the defendant above named, and moves that the verdict of the jury herein on the First Count of the Indictment be vacated and set aside and held for naught, and that he have a new trial herein upon the following grounds:

1. Errors of law committed by the Trial Court in the admission of incompetent, irrelevant and immaterial, and secondary and hearsay evidence offered by the United States prejudicial to this defendant.

2. Errors of law committed by the Trial Court in the exclusion of competent, relevant, and immaterial evidence offered by the defendant.

3. Errors of the Trial Court in refusing to give instructions requested by defendant, to which refusals exceptions were duly taken, and in giving certain instructions requested by the United States

and objected to by defendant, to the giving of which instructions defendant duly excepted.

4. Error of the Trial Court in denying defendant's motion for a directed verdict.

5. That the verdict against the defendant on the First Count of the Indictment and his acquittal on the Second Count is an inconsistent and impossible verdict. [20]

6. That the verdict on the First Count of the Indictment is contrary to the law and the evidence and the weight of the evidence, and is an impossible verdict.

This motion is based upon the records and proceedings had herein.

Dated, Honolulu, T. H., December 8, 1922.

LEE CHOY,

Defendant Above Named.

THOMPSON, CATHCART & ULRICH,

By (Sgd.) J. DONOVAN FLINT,

His Attorneys. [21]

United States of America,
District of Hawaii,—ss.

In the District Court of the United States in and
for the District and Territory of Hawaii.

No. 3259.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

Sentence.

Now, upon motion of William T. Cárden, United States District Attorney, in and for the District and Territory of Hawaii, the said defendant, Lee Choy, is brought before the bar of this court for judgment and sentence upon his conviction of unlawfully violating the Act of May 26, 1922,⁶ whereupon, the Court, addressing the defendant, said:

“You, Lee Choy, were on October 21, 1922, duly and regularly indicted by the Grand Jury in and for the Territory and District of Hawaii for certain alleged crimes, the indictment therefor being in two counts. The first count of the said indictment charged you with the commission of the crime of unlawfully, fraudulently, knowingly and feloniously receiving, concealing, buying, selling, and facilitating the transportation, concealment and sale, of, after having been unlawfully imported and brought into the United States, a certain narcotic drug, said narcotic drug then and there being a derivative and preparation of opium, to wit, 20 five-tael tins of opium.

“The second count of the said indictment charged you with the commission of the crime of knowingly, unlawfully, fraudulently and feloniously purchasing, selling, dispensing and distributing 20 five-tael tins of opium from packages to which there was not then and there affixed the tax-paid stamp required by law, which said opium was so purchased, sold,

dispensed and distributed by you, as aforesaid, not then and there being in the original stamped package and not being then and there taken from an original stamped package. [22]

“Upon the said indictment so returned and charging you with the crimes aforesaid you were duly and regularly arraigned on October 23, 1922, to which indictment on the date last mentioned you entered a plea of not guilty.

“Upon this indictment and the charges therein made, you have had a fair and impartial trial in this court by a duly and lawfully constituted jury, which jury, on November 20, 1922, after due consideration, returned a verdict against you, finding you guilty of the crime aforesaid as charged in count one of the said indictment, and finding you not guilty of count two of said indictment.

“The Court now asks you if you have anything to say why judgment and sentence should not now be pronounced against you.”

The defendant personally said nothing, but his counsel addressed the Court for leniency.

Whereupon the Court proceeded as follows:

“It is considered and adjudged by the court that you, Lee Choy, are guilty of the crime aforesaid as charged in count one of the said indictment and as found by the verdict of the jury herein, returned on November 20, 1922; and it is, therefore, now considered, ordered and adjudged, and it is the judgment and sentence of the court, that you, Lee Choy, be im-

prisoned in Oahu Prison, in the City and County of Honolulu, Territory of Hawaii, for the term of two years and pay a fine of Two Hundred Fifty Dollars and costs of these proceedings. Let Mittimus issue accordingly."

Dated at Honolulu, T. H., December 9th, 1922.

(Sgd.) J. T. DeBOLT,

Judge, United States District Court.

Entered in J. D. Book, at folio #3328. [23]

In the District Court of the United States for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error. Notice of Presentation of Petition for Writ of Error and Supersedeas and Bail. Filed Dec. 12, 1922. Wm. L. Rosa, Clerk. By (Sgd.) Ritchie G. Rosa, Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. W. T. Carden, United States District Attorney for the District and Territory of Hawaii, Attorney for Plaintiff-Defendant in Error. [24]

In the District Court of the United States for the Territory of Hawaii.

CRIMINAL No. 3259.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error.

Notice of Presentation of Petition for Writ of Error and Supersedeas and Bail.

To the United States of America, the Above Defendant in Error, and to Its Attorney,

YOU AND EACH OF YOU WILL HEREBY PLEASE TAKE NOTICE: That on the 12th day of December, 1922, at the hour of 2 o'clock in the afternoon of said day, or as soon thereafter as counsel can be heard, we will present to the said Court a petition for writ of error and supersedeas and bail herein, and assignment of errors herein, and shall move said Court to allow said writ of error and supersedeas and bail, and to direct the issuance of the same, and the citation herein.

Copies of said petition for writ of error and supersedeas and bail, and of the assignment of errors herein, are made part of this notice, attached hereto and served herewith.

Dated, Honolulu, T. H., this 12th day of December, 1922.

LEE CHOY,
Plaintiff in Error,
By THOMPSON, CATHCART & ULRICH,
J. DONOVAN FLINT,

His Attorneys.

Receipt of copy of the foregoing notice and receipt of the various papers therein referred to is hereby admitted, this 12th day of December, 1922.

(Sgd.) WILLIAM T. CARDEN,
United States District Attorney. [25]

In the District Court of the United States for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error, Petition for Writ of Error and Supersedeas and Bail. Filed Dec. 12, 1922. Wm. L. Rosa, Clerk. By (Sgd.) Ritchie G. Rosa, Deputy Clerk. Thompson, Cathcart, & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. W. T. Carden, United States District Attorney for the District and Territory of Hawaii, Attorney for Plaintiff-Defendant in Error. [26]

In the District Court of the United States for the
Territory of Hawaii.

LEE CHOY,

Defendant-Plaintiff in Error.

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error,

**Petition for Writ of Error and Supersedeas and
Bail.**

To the Honorable JOHN T. DeBOLT, Judge of the
District Court of the United States, for the
Territory of Hawaii,

Now comes LEE CHOY, plaintiff in error in the above-entitled cause, said cause being originally entitled in said Court, "The United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal No. 3259," wherein Lee Choy, plaintiff in error herein, was defendant; and the said Lee Choy says that on,

to wit, the 20th day of November, A. D. 1922, the jury in said cause returned a verdict in favor of the plaintiff, the United States of America, defendant in error herein, and thereafter, and on, to wit, the 9th day of December, A. D. 1922, said Court entered a judgment and sentence therein in favor of the United States of America and against the said Lee Choy, in which said verdict and judgment and proceedings had prior thereto in said cause certain errors were committed to the prejudice of said defendant, Lee Choy, the plaintiff in error herein, all of which will in more detail appear in the assignment of errors which is filed with this petition.

WHEREFORE, this plaintiff in error prays that a writ of error be issued in his behalf out of the United States Circuit [27] Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transfer of the record, proceedings and papers of said cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; that said writ of error may be made a supersedeas; that your petitioner be released on bail in an amount to be fixed by the Judge thereof, pending the final disposition of said writ of error; and that further proceedings in the United States District Court for the Territory of Hawaii be suspended and stayed until the determination of the said writ of error by the Ninth Circuit Court of Appeals.

Dated at Honolulu, T. H., this 12th day of December, 1922.

LEE CHOY,
Plaintiff in Error,
By THOMPSON, CATHCART & ULRICH,
His Attorneys.
(S.) J. DONOVAN FLINT.

Receipt of copy of the foregoing petition for writ of error and supersedeas and bail, and receipt of a copy thereof, are hereby admitted this 12th day of December, 1922.

WILLIAM T. CARDEN,
United States District Attorney. [28]

In the District Court of the United States for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Defendant-plaintiff in Error, vs. The United States of America, Plaintiff-defendant in Error. Assignment of Errors. Filed Dec. 12, 1922. Wm. L. Rosa, Clerk. By (Sgd.) Ritchie G. Rosa, Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Plaintiff in Error. [29]

In the District Court of the United States for the
Territory of Hawaii.

CRIMINAL No. —.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error,

Assignment of Errors.

Now comes LEE CHOY, plaintiff in error, who was defendant in the original cause entitled, the United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal No. 3259, and in connection with his petition for a writ of error, says that in the record, proceedings, and judgment aforesaid, error has intervened to his prejudice, to wit:

1. That the Court erred in denying plaintiff in error's motion for directed verdict as to Count Two of the Indictment, on the following grounds:

A. That there is no evidence in the record of the purchase, sale, or distribution of opium without the tax-paid stamp required by law.

B. That there was no evidence in the record of any possession of opium by the defendant, now plaintiff in error.

3. That the Court erred in directing the jury to find the defendant not guilty at the close of the whole case.

4. That the Court erred in charging the jury as follows:

You are instructed that if you find from the evidence beyond a reasonable doubt that the United States has proved that the defendant was in the actual possession of twenty-five tael tins of opium in the manner and form as charged in Count Two of the indictment and that there were no tax-paid stamps on the containers of said opium, that such facts taken by themselves shall be presumptive evidence of the violation of the acts and on this evidence alone you are authorized to find the defendant guilty unless by some other evidence in the case [30] or some other facts or circumstances in the case have raised in your minds a reasonable doubt as to whether or not the said possession by the defendant was lawful.

5. That the Court erred in charging the jury as follows:

The word "possession" may mean either the conscious having, holding or detaining of property in one's power or control, and may refer to one's own property or to the property of another, and may be either permanent or temporary possession. The word "possession" is not limited to manual touch or personal custody.

6. That the Court erred in not charging the jury as requested by the defendant as follows:

I direct you, Gentlemen of the Jury, that you shall find the defendant not guilty of the offense charged in Count One of the Indictment.

7. That the Court erred in not charging the jury as requested by the defendant as follows:

I direct you, Gentlemen of the Jury, that you should find the defendant not guilty of the offense charged in Count Two of the Indictment.

8. That the Court erred in not charging the jury as requested by the defendant as follows:

I instruct you, Gentlemen of the Jury, that the indictment preferring this charge against the defendant is no evidence whatever of his guilt; it is simply an accusation or charge; and no juror should suffer himself to be influenced in the slightest degree by the fact that this indictment has been returned against the defendant.

(Sackett—Vol. 2—Pg. 1651.)

9. That the Court erred in not charging the jury as requested by the defendant as follows:

The jury are further instructed that the presumption of innocence is not a mere form, to be disregarded by the jury at pleasure, but it is an essential, substantial part of the law of the land, and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption, and to acquit the defendant, unless the evidence in the case convinces them of his guilt as charged, beyond all reasonable doubt.

(Sackett—Vol. 2—Pg. 1694.) [31]

10. That the Court erred in not charging the jury as requested by the defendant as follows:

The Court instructs the jury that certain police officers and detectives have testified in

this case on behalf of the United States, and that, under the law, in weighing their testimony greater care should be used, because of the natural and unavoidable tendency of such persons in procuring and stating evidence against the accused.

Sackett—Vol. 2—Pg. 1771.)

11. That the Court erred in not charging the jury as requested by the defendant as follows:

The testimony of detectives and informers, whose business it is to secure evidence, should be examined and weighed with greater care than that of witnesses wholly disinterested.

Hughes—Sec. 224—Pg. 216.)

12. That the Court erred in not charging the jury as requested by the defendant as follows:

If after consideration of the whole case, any juror should entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror so entertaining such doubt not to vote for a verdict of guilty, nor to be influenced in so voting for the simple reason that a majority of the jury should be in favor of a verdict of not guilty.

Hughes—Sec. 301—Pg. 299.)

13. That the Court erred in not charging the jury as requested by the defendant as follows:

Each juror must be satisfied beyond a reasonable doubt that the defendant is guilty as charged, before he can, under his oath, consent to a verdict of conviction. If any one of the jurors, after having duly considered all the

evidence, and after having consulted with his fellow-jurymen, entertains such reasonable doubt, the jury cannot, in such case, find the defendant guilty.

Hughes—Sec. 301—Pg. 299.)

14. That the Court erred in not charging the jury as requested by the defendant as follows:

The Court instructs the jury that it is not sufficient that the circumstances coincide with, account for, and therefore render probable the guilt of the defendant. They must exclude to a moral certainty every other reasonable hypothesis. [32]

15. That the verdict of the jury is not supported by any competent evidence in the record.

16. That the Court erred in overruling and denying motion of the defendant for a new trial.

17. That the verdict against the defendant on the first count and his acquittal on the second count is an inconsistent and impossible verdict and cannot be sustained.

18. That the verdict on the first count of the indictment is contrary to the law and the evidence and the weight of the evidence, and is an impossible verdict.

WHEREFORE, said plaintiff in error prays that the said judgment of the District Court of the United States be reversed and held for naught.

Dated at Honolulu, T. H., December 12th, A. D. 1922.

LEE CHOY,
Plaintiff in Error.
THOMPSON, CATHCART & ULRICH,
By J. DONOVAN FLINT,
His Attorneys. [33]

In the District Court of the United States, for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Defendant-Plaintiff in Error, vs. the United States of America, Plaintiff-Defendant in Error. Order Allowing Writ of Error and Admitting Defendant to Bail. Filed December 19, 1922, at 3 o'clock P. M. Wm. L. Rosa, Clerk. By (Sgd.) Wm. F. Thompson, Jr., Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. W. T. Carden, United States District Attorney, for the Territory of Hawaii, Attorney for Plaintiff-Defendant in Error. [34]

In the District Court of the United States for the
Territory of Hawaii.

CRIMINAL No. —.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Plaintiff-Defendant in Error.

Order Allowing Writ of Error and Admitting Defendant to Bail.

IT IS HEREBY ORDERED that a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, at the City and County of San Francisco, State of California, for the final judgment heretofore given, made, filed and entered up in the above-named court in the above-named cause, originally entitled "The United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal No. 3259," upon the issues there joined between the said United States of America and the above-named Lee Choy, and the said writ of error is hereby allowed upon the petition of the said Lee Choy, and

IT IS ORDERED that a Citation be issued to the defendant in error, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

And it now appearing that a citation has been served in the cause, IT IS NOW ORDERED that a writ of error be allowed as above stated to operate as a supersedeas, and the defendant [35] be admitted to bail upon furnishing a bond in the penal sum of Six Thousand Dollars (\$6,000.00), conditioned according to law, to be approved by me.

Dated, Honolulu, T. H., this 19th day of December, 1922.

(S.) J. T. DeBOLT,

Judge, United States District Court for the Territory of Hawaii. [36]

In the District Court of the United States for the Territory of Hawaii. Criminal No. ——. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error. Writ of Error. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. W. T. Carden, United States Dist. Atty., for the Territory of Hawaii, Attorney for the United States of America, Plaintiff-Defendant in Error. [37]

In the District Court of the United States for the Territory of Hawaii.

CRIMINAL No. ——.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error.

Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable JOHN T. DeBOLT, Judge of the United States District Court for the Territory of Hawaii, GREETING:

Because in the record and proceedings, as also in the giving, making, rendition, entering and filing of the final judgment in that certain matter in the aforesaid District Court before you, between the United States of America, plaintiff, being the de-

pendant in error herein, and Lee Choy, defendant, being the plaintiff in error herein, manifest errors have happened to the great prejudice and damage of said Lee Choy, plaintiff in error as appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the records and proceedings aforesaid with all things concerning the same to the United States Court of Appeals in the Ninth Circuit, at the City and County of San Francisco, State of [38] California, together with this writ, so that you have the same at the said place in the said City and County of San Francisco, State of

January W. L. R.

California, on the 19th day of ~~December~~,

A. D. 1923; that the said record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals of the Ninth Circuit, may cause further to be done therein to correct those errors, what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 12th day of December, A. D. 1922.

ATTEST, my hand and the seal of the United States District Court for the Territory of Hawaii, at the Clerk's office at Honolulu, City and County of

Honolulu, Territory of Hawaii, this 19th day of December, A. D. 1922.

[Seal]

WM. L. ROSA,
Clerk.

By Wm. F. Thompson, Jr.,
Deputy Clerk, United States District Court, Territory of Hawaii.

Service of the above writ and receipt of a copy thereof are hereby admitted this 19th day of December, 1922.

WILLIAM T. CARDEN,
United States District Attorney. [39]

In the District Court of the United States for the Territory of Hawaii. Criminal No. ——. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error. Citation on Writ of Error. December 19, 1922, 3 P. Wm. L. Rosa. Wm. F. Thompson, Jr. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. W. T. Carden, United States Dist. Atty. for Territory of Hawaii, Attorney for Plaintiff-Defendant in Error. [40]

In the District Court of the United States for the
Territory of Hawaii.

CRIMINAL No. —.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error.

Citation on Writ of Error.

The President of the United States of America, to
the United States of America and Its Counsel,
GREETING:

You and each of you are hereby cited and admonished to appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City and County of San Francisco, State of California, within thirty days from and after the day this citation bears date, pursuant to a Writ of Error filed in the office of the Clerk of the United States District Court for the Territory of Hawaii, in the above-entitled cause, wherein the United States is plaintiff-defendant in error, and Lee Choy is defendant-plaintiff in error, to show cause if any there be, why the verdict made and entered in the above-entitled cause on the 20th day of November, 1922, and the sentence imposed upon said plaintiff-defendant in error upon the 9th day of December, A. D. 1922, as in said writ of error assigned and thereby appealed from, should not be corrected and

reversed, and why speedy judgment should not be done to the party plaintiff in error in that behalf.

WITNESS the Honorable JOHN T. DeBOLT,
United States District Judge in and for the Territory of Hawaii, this 19th day of December, 1922.

J. T. DeBOLT,

Judge United States Dist. Ct., T. H.

[Seal]

Attest: WM. L. ROSA,

Clerk.

By Wm. F. Thompson, Jr.,

Deputy Clerk, United States Dist. Ct., T. H.

Service of the within and foregoing citation is hereby accepted, and receipt of a copy thereof acknowledged, this 12th day of December, 1922.

United States District Attorney. [41]

In the District Court of the United States for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error. Recognizance for Costs. Filed Dec. 19, 1923. (S.) Wm. L. Rosa, Clerk. By———, Deputy Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. [42]

In the District Court of the United States for the
Territory of Hawaii.

CRIMINAL No. 3259.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error.

Recognizance for Costs.

United States of America,

Territory of Hawaii,—ss.

BE IT REMEMBERED that on this 19th day of December, A. D. 1922, before me, William L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, duly appointed by said Court, and duly qualified and acting as such Clerk, personally came Lee Choy, as principal, and Chun Hoon and Pang See, as sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of One Thousand Dollars (\$1,000.00) to be levied on their goods and chattels, lands and tenements, if default be made in the conditions following; to wit:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that:

WHEREAS, to wit, heretofore and on, to wit, the 20th day of November, A. D. 1922, the above-named plaintiff in error, Lee Choy, defendant in the original cause entitled, "United States of

America, Plaintiff, vs. Lee Choy, Defendant, Criminal Number 3259," was by a petit jury in the United States District Court for the Territory of Hawaii found guilty of transporting opium, and thereafter, on, to wit, the 9th day of December, A. D. 1922, the said Lee Choy was by said Court sentenced to imprisonment for a period of two (2) years, and to pay a fine of two hundred fifty dollars (\$250.00), and to pay the costs of said proceedings;

WHEREAS, thereafter and on, to wit, the 19th day of December, A. D. 1922, the Honorable J. T. DeBolt, one of the [43] Judges of the United States District Court for the Territory of Hawaii, did duly and regularly order that a writ of error be allowed in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, City and County of San Francisco, State of California, from the final judgment theretofore, as aforesaid, given, made, filed, and entered by the above-named court in the above-named cause originally entitled "United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal Number 3259";

WHEREAS, heretofore, on, to wit, the 19th day of December, 1922, a citation upon said writ of error was duly and regularly issued in the above-entitled court and cause directed to the United States of America and its counsel, citing and admonishing them and each of them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, City and

County of San Francisco, State of California, within thirty (30) days from and after the day of the date of said citation to show cause, if any there be, why the verdict entered in the above-entitled cause on the 20th day of November, 1922, and the sentence imposed upon said plaintiff in error on the 9th day of December, A. D. 1922, should not be corrected and reversed, and speedy judgment should not be done to the party plaintiff in error in that behalf; and

WHEREAS, the Honorable J. T. DeBolt, one of the Judges of said United States District Court for the Territory of Hawaii, did regularly order that pending such writ of error the said Lee Choy, give his recognizance with sureties in the sum of One Thousand Dollars (\$1,000.00) conditional upon him, the said Lee Choy, prosecuting the said writ of error to effect, and if he fail to make his plea good, answer all costs thereon. [44]

NOW, THEREFORE, shall Lee Choy, plaintiff in error, prosecute his said writ of error to effect, and if he fail to make his plea good, answer all costs, thereon, then this obligation to be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above-bounden principal and sureties have hereunto set their respective hands this 19th day of December, A. D. 1922.

(Sgd.)	LEE CHOY,
	Principal.
(Sgd.)	CHUN HOON,
(Sgd.)	PANG SEE,
	Sureties.

United States of America,
Territory of Hawaii,—ss.

We, Chun Hoon and Pang See, being each severally sworn, depose and say: That he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that he is worth the sum of one thousand dollars (\$1,000.00) over and above all his just debts, liabilities and exemptions, and that he has property equal to said amount in the Territory of Hawaii and subject to execution, levy and bail.

(Sgd.) CHUN HOON.

(Sgd.) PANG SEE.

Subscribed and sworn to before me this 19th day of December, A. D. 1922.

[Seal] (Sgd.) WM. F. THOMPSON, Jr.,
Deputy Clerk of the United States District Court
for the Territory of Hawaii.

Approved as to form and sufficiency of sureties.

(Sgd.) J. T. DeBOLT,
Judge of the United States District Court for the
Territory of Hawaii, Presiding.

Approved as to form.

(Sgd.) WILLIAM T. CARDEN,
United States Attorney. [45]

In the District Court of the United States for the Territory of Hawaii. Criminal No. 3259. Lee Choy, Defendant-Plaintiff in Error, vs. The United States of America, Plaintiff-Defendant in Error.

Recognizance. Filed Dec. 19, 1922. (Sgd.) Wm. L. Rosa, Clerk. Thompson, Cathcart & Ulrich, 2-15 Campbell Block, Honolulu, T. H., Attorneys for Defendant-Plaintiff in Error. [46]

In the District Court of the United States for the
Territory of Hawaii.

CRIMINAL No. 3259.

LEE CHOY,

Defendant-Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Plaintiff-Defendant in Error.

Recognizance.

KNOW ALL MEN BY THESE PRESENTS, That I, Lee Choy, of Honolulu, City and County of Honolulu, Territory of Hawaii, as principal, and Chun Hoon and Pang See of the same place, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of Six Thousand Dollars (\$6,000.00) to be paid the United States of America, to which payment well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

WHEREAS, lately, on the 20th day of November, A. D. 1922, the above-named plaintiff in error, Lee Choy (defendant in the original cause entitled "United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal No. 3259"), by a petit jury

in the United States District Court for the Territory of Hawaii, found guilty in a cause pending in said court, and a sentence was imposed upon said plaintiff in error on the 9th day of December, 1922; and

WHEREAS, on, to wit, the 19th day of December, 1922, the Honorable John T. DeBolt, one of the Judges of the said United States District Court for the Territory of Hawaii, did duly and regularly order that a writ of error be allowed in the above-entitled [47] cause to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, City and County of San Francisco, State of California, from the final judgment and sentence given, made, filed and entered in the above-named cause, entitled originally, the "United States of America, Plaintiff, vs. Lee Choy, Defendant, Criminal No. 3259"; and

WHEREAS, to wit, on the 19th day of December, A. D. 1922, a citation upon said writ of error was duly and regularly issued, directed to the said United States of America and its counsel citing and admonishing them, and each of them, to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit at the City and County of San Francisco, State of California, within thirty (30) days from and after the date of said citation, to show cause, if any there be, why the verdict made and entered in the above-entitled cause on the 20th day of November, A. D. 1922, and the sentence imposed upon said plaintiff in error on the 9th day of December, A. D. 1922,

should not be corrected and reversed, and why speedy justice should not be done to the party plaintiff in error in that behalf, and

WHEREAS, the Honorable John T. DeBolt, one of the Judges of said United States District Court for the Territory of Hawaii, did regularly order that, pending such writ of error, the said Lee Choy give his recognizance with surety in the sum of Six Thousand Dollars (\$6,000) for his appearance before the said United States Circuit Court of Appeals for the Ninth Circuit, and that upon giving such recognizance the said Lee Choy be released from custody.

NOW, THEREFORE, if the said Lee Choy shall personally be and appear before the United States Circuit Court of Appeals for the Ninth Circuit on the 19th day of January, A. D. 1923, at San Francisco, City and County of San Francisco, State of [48] California, from day to day and from term to term thereafter, and from day to day of each term thereafter, until discharged by order of said Court, then and there to answer to the United States of America and abide the order and judgment of said United States Circuit Court of Appeals of the Ninth Circuit, and not depart the same without leave, and in the event of said writ of error being dismissed and/or the judgment and sentence of said United States District Court for the Territory of Hawaii, being affirmed on appeal, render himself in execution thereof, then this obligation to be void, otherwise to remain in full force, virtue and effect.

IN WITNESS WHEREOF the above-named principal and sureties do hereunto set their hands this 19th day of December, A. D. 1922.

(Sgd.) LEE CHOY,
Principal.

(Sgd.) CHUN HOON,
Surety.

(Sgd.) PANG SEE,
Surety.

United States of America,
Territory of Hawaii,—ss.

We, Chun Hoon and Pang See, being each severally sworn, depose and say: That he is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii, and is worth the sum of Six Thousand Dollars (\$6,000) over and above all his just debts, liabilities and exemptions, and that he has property equal to the said amount within the Territory of Hawaii, and subject to execution, levy and sale.

(Sgd.) CHUN HOON.
(Sgd.) PANG SEE.

Subscribed and sworn to before me this 19th day of December, 1922.

[Seal] (Sgd.) WM. F. THOMPSON, Jr.,
Deputy Clerk of the United States District Court
of the Territory of Hawaii.

Approved as to form and sufficiency of sureties.

(Sgd.) J. T. DeBOLT,
Judge of the District Court of the United States,
for the Territory of Hawaii.

Approved as to form.

(Sgd.) WILLIAM T. CARDEN,
United States District Attorney. [49]

In the United States District Court for the Territory of Hawaii. United States of America, Plaintiff, vs. Lee Choy, Defendant. Charge to the Jury. Filed Nov. 20, '22. (Sgd.) Wm. L. Rosa, Clerk. [50]

In the United States District Court for the Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

Charge to the Jury.

GENTLEMEN OF THE JURY:

The indictment in this case is in two counts.

The first count charges that the defendant on or about the 18th day of October, 1922, at and within the Territory and District of Hawaii, did unlawfully, fraudulently, knowingly, and feloniously receive, conceal, buy, sell and facilitate the transportation, concealment and sale of, after having been imported and brought into the United States, a certain narcotic drug, said narcotic drug then and there being a derivative and preparation of opium, to wit, twenty 5-tael tins of opium, all of which said narcotic drug as he, the said Lee Choy, then and there well knew had been theretofore unlawfully

imported and brought into the United States, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

The second count charges that the defendant on or about the 18th day of October, 1922, at and within the said District, did knowingly, unlawfully, fraudulently and feloniously purchase, sell, dispense and distribute twenty 5-tael tins of opium from packages to which there was not then and there affixed the tax-paid [51] stamp required by law, which said opium then and there was a compound, manufacture, salt, derivative and preparation of opium and was so purchased, sold, dispensed and distributed by the said Lee Choy, as aforesaid, not then and there being in the original stamped package; and not being then and there taken from an original stamped package; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

In this connection, I instruct you, gentlemen of the jury, that the only offenses with which the defendant is charged in this case, and the only offenses of which it is legally possible for you to find him guilty, are the offenses charged and set forth in counts one and two of the indictment which I have just read to you. There is no charge made against the defendant in this case for in any way dealing with any other opium; as for example, the opium which the prosecuting witness, Mrs. Alapa, testified that she carried from the boat on her first trip on the night of October the 18th.

And I further instruct you, gentlemen of the jury, in this connection, that the evidence concerning the first lot of opium which the prosecuting witness testified that she brought ashore from the steamer "President Wilson" was admitted in evidence solely as bearing upon the probability or improbability of the defendant having received, concealed, bought, sold, or facilitated the transportation, concealment, or sale, after importation, of the particular twenty 5-tael tins of opium received in evidence in this case, and also as bearing upon the probability or improbability of his having purchased, sold, dispensed, or distributed, those particular twenty 5-tael tins of opium without having had affixed to them the tax stamp required by law. [52]

And, further in this connection, I instruct you that since May 26, 1922, it has been unlawful to fraudulently or knowingly receive, conceal, buy, sell or in any manner to facilitate the transportation, concealment, or sale, after unlawful importation of opium, knowing the same to have been imported contrary to law. [53]

INSTRUCTION No. 2.

I instruct you, Gentlemen of the Jury, that the defendant in this case is not charged with having unlawfully imported or smuggled opium into the United States, but only with having unlawfully received, concealed, bought, sold and facilitated the transportation, concealment and sale of opium after it had already been unlawfully imported and brought into the United States, and therefore, unless you find from the evidence that as a matter of fact this

defendant did receive, or did conceal, or did buy, or did sell, or did facilitate the transportation, concealment, or sale of this particular opium after and not before it had been imported and brought into the United States, then you must find the defendant not guilty of the offense charged in count one of the indictment. [54]

INSTRUCTION No. 3.

I further instruct you, Gentlemen of the Jury, that the defendant is charged in Count Two of the Indictment of having actually purchased, sold and dispensed and distributed the particular twenty five-tael tins of opium in evidence in this case, and unless you can find from the evidence that, as a matter of fact, at the time of his arrest and of the finding of the indictment against him, he had actually purchased, sold, dispensed or distributed that particular opium which is in evidence in this case, then you must find the defendant not guilty of the offense so charged in said count two of the indictment. [55]

INSTRUCTION No. 5.

You are instructed that if you find from the evidence beyond a reasonable doubt that the United States has proved that the defendant was in the actual possession of twenty five-tael tins of opium in the manner and form as charged in Count Two of the indictment and that there were no tax-paid stamps on the containers of said opium, that such facts taken by themselves shall be presumptive evidence of the violation of the act and on this evidence alone you are authorized to find the defendant

guilty unless by some other evidence in the case or some other facts or circumstances in the case have raised in your minds a reasonable doubt as to whether or not the said possession by the defendant was lawful. [56]

INSTRUCTION No. 6.

The word "possession" may mean either the conscious having, holding or detaining of property in one's power or control, and may refer to one's own property or to the property of another, and may be either permanent or temporary possession. The word "possession" is not limited to manual touch or personal custody.

In this connection I charge you that if you find and believe from the evidence beyond a reasonable doubt that the defendant and Eunis G. Alapa were acting together and in concert in the acts as charged against the defendant in the indictment, then, irrespective of the individual acts of either in the transaction such individual acts, would be the acts of each and both of them. The actual possession therefore of the said Eunis G. Alapa of the opium in question, if you so find that she had such actual possession, would be the possession of the defendant Lee Choy. [57]

INSTRUCTION No. 7.

You are instructed that the statute under which this defendant is charged in Count One of the indictment provides that when on trial for its violation, the defendant is shown to have, or to have had, possession of the said opium, such possession shall be deemed sufficient evidence to authorize conviction

unless the defendant shall explain the possession to the satisfaction of the Jury. In this connection you are instructed that if the defendant has been shown to have been in possession of opium beyond a reasonable doubt, then it becomes incumbent upon him to show that his possession was lawful or innocent; in other words, the United States must show beyond a reasonable doubt, possession by defendant and that the thing possessed was such opium and defendant had knowledge thereof; but when such possession by the defendant of such opium is so shown, then, as the terms of the statute provide, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain his possession to the satisfaction of the jury or, unless in the evidence somewhere, whether introduced by or in behalf of the government, or in the circumstances appearing in the evidence, or in the nature of the possession itself, there is a satisfactory explanation or a satisfactory accounting for such possession—such an accounting or explanation made by the defendant or by the testimony in the case, as raises in your minds a reasonable doubt of the defendant's guilt. [58]

INSTRUCTION No. 17.

REASONABLE DOUBT.

The Court further instructs you, Gentlemen of the Jury, that the indictment in this case is of itself a mere formal accusation or charge against the defendant, and is not of itself any evidence of the guilt of the defendant. The burden of proof in this case is upon the United States, and the

law, independent of the evidence, presumes the defendant to be innocent, and this presumption continues and attends him at every stage of the case until it has been overcome by evidence which proves him guilty to your satisfaction and beyond a reasonable doubt.

The term "reasonable doubt" as used in these instructions, does not mean a mere possible, imaginary or conjectural doubt, but an actual, substantial doubt of the defendant's guilt arising from the evidence, or from a lack of evidence, in the case.

A reasonable doubt is that state of the case, which, after a full and fair consideration of all the evidence, both for the United States and for the defendant, leaves your minds in that condition that you cannot say that you feel an abiding conviction, amounting to a moral certainty, that the defendant is guilty. If you have such reasonable doubt as to the defendant's guilt you must acquit him; for it is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances, that the charge against the defendant is more likely to be true than the contrary; but the evidence must establish the truth of the charge to a reasonable and moral certainty, a certainty that convinces and directs your understanding, and satisfies your reason and judgment, you being bound to act conscientiously upon such evidence. This we take to be proof beyond a reasonable doubt. If upon such proof you can say that you feel an abiding conviction, amounting to a moral certainty, that the defendant is guilty as

charged, then you are satisfied beyond a reasonable doubt, and you should convict him.

(Sgd.) J. T. DeBOLT,
Judge. [59]

In the United States District Court for the Territory of Hawaii.

THE UNITED STATES OF AMERICA

vs.

LEE CHOY,

Defendant.

Defendant's Requested Instructions. [60]

2. INSTRUCTION No. 5.

I direct you, Gentlemen of the Jury, that you shall find the defendant not guilty of the offense charged in Count One of the Indictment.

Refused (Sgd.) J. T. D. [61]

3. INSTRUCTION No. 6.

I direct you, Gentlemen of the Jury, that you should find the defendant not guilty of the offense charged in Count Two of the Indictment.

Refused (Sgd.) J. T. D. [62]

4. INSTRUCTION No. 9.

The Court instructs the jury that the defendant at the outset of the trial is presumed to be an innocent man. He is not required to prove himself innocent or to put in any evidence at all upon that subject. In considering the testimony in the case, you must look at that testimony and view it in

the light of that presumption which the law clothes the defendant with, that he is innocent, and it is a presumption that abides with him throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

Refused (Sgd.) J. T. D.

(Branson—Sec. 376—Pgs. 397–8.) [63]

5. INSTRUCTION No. 8.

I instruct you, Gentlemen of the Jury, that the indictment preferring this charge against the defendant is no evidence whatever of his guilt; it is simply an accusation or charge; and no juror should suffer himself to be influenced in the slightest degree by the fact that this indictment has been returned against the defendant.

(Sackett—Vol. 2—Pg. 1651.)

Refused (Sgd.) J. T. D. [64]

INSTRUCTION No. 41.

6.

The law presumes every man to be innocent, and in this case the burden of proof is upon the United States, and, to entitle it to a conviction of the defendant, the United States must prove every material element of the offense charged to your satisfaction beyond a reasonable doubt, and to the satisfaction of each member of the jury.

The prisoner at the bar is presumed to be innocent until he is proven to be guilty. He is not required to prove his innocence, but may rest upon the presumption in his favor until it is overthrown by positive, affirmative proof. The burden is therefore on the United States to establish to your satisfac-

tion, beyond any reasonable doubt, the guilt of the prisoner as to the crime charged in this indictment. If you entertain any reasonable doubt as to any fact or element necessary to constitute the prisoner's guilt, it is your sworn duty to give him the benefit of the doubt and return a verdict of acquittal. And even where the evidence demonstrates probability of guilt, yet if it does not establish it beyond a reasonable doubt, you must acquit the prisoner.

(Sackett—Vol. 2.—Pg. 1596.)

Refused (Sgd.) J. T. D. [65]

7. INSTRUCTION No. 42.

The only foundation of a verdict of guilty in this case is that the entire jury shall believe from the evidence, beyond a reasonable doubt and to a moral certainty, that the defendant is guilty as charged in the indictment, to the exclusion of every probability of his innocence, and every reasonable doubt of his guilt; and if the prosecution has failed to furnish such measure of proof, and to so impress the minds of the jury of his guilt, they should find him not guilty.

(Sackett—Vol. 2.—Pg. 1740.)

Refused (Sgd.) J. T. D. [66]

8. INSTRUCTION No. 43.

The Court instructs the jury, that before they can convict the defendant in this case, it must appear, from the evidence, beyond a reasonable doubt, that the defendant, and not somebody else, committed the offense charged in the indictment. It is not sufficient that the evidence shows that the defendant

or somebody else committed the crime, nor that the probabilities are that the defendant and not somebody else committed the crime, unless those probabilities are so strong as to remove all reasonable doubt as to whether the defendant or someone else is the guilty party.

(Seckett—Vol. 2.—Pgs. 1585 and 1586.)

Refused (Sgd.) J. T. D. [67]

9. INSTRUCTION No. 44.

The Court instructs the jury that the defense in this case is what is known in law as an “alibi”; that is, that the defendant was not present at the time and place of the commission of the offense charged in the indictment, if any such offense has been committed, but that he was at that time at another and different place. As to this defense, you are instructed that it is not necessary for the defendant to prove an alibi to your satisfaction, beyond a reasonable doubt, nor by a preponderance of the testimony, but if, after a full and fair consideration of all the facts and circumstances in evidence, you entertain a reasonable doubt as to whether or not the defendant was present at the time and place of the commission of the offense charged in the indictment, if such offense has been committed by anyone, it will be your duty to give the defendant the benefit of such doubt and acquit him.

(Branson—Sec. 371—Pg. 390—1.)

Refused (Sgd.) J. T. D. [68]

10. INSTRUCTION No. 45.

You are further instructed that you are the sole judges of the credibility that ought to be given to the testimony of the different witnesses, and you are not bound to believe anything to be a fact because the witness has stated it to be so, provided you believe from all the evidence that such witness is mistaken or has knowingly testified falsely as to that fact.

Refused (Sgd.) J. T. D. [69]

11. INSTRUCTION No. 46.

You are instructed that the law presumes innocence in all criminal prosecutions. We begin with a legal presumption that the defendant, although accused, is an innocent man, not that we take that to be an absolute rule, but it is the principle upon which prosecutions must be conducted that the evidence must overcome the legal presumption of innocence, and in order to overcome the legal presumption as I have already stated, the evidence must be clear and convincing and sufficiently strong to convince the jury beyond a reasonable doubt that the defendant is guilty. A reasonable doubt is an actual doubt that you are conscious of having after going over in your minds the entire case, giving consideration to all the testimony and every part of it. If you then feel uncertain and not fully convinced that the defendant is guilty and believe that you are acting in a reasonable manner, and if you believe that a reasonable man in any matter of like importance would hesitate to act because of such doubt as you are conscious of having, that is a rea-

sonable doubt, of which the defendant is entitled to have the benefit, and you must acquit him.

Holt vs. U. S., 218 U. S. 245.

Refused (Sgd.) J. T. D. [70]

12. INSTRUCTION No. 47.

In considering the evidence if you can reasonably account for any fact in this case upon a theory or hypothesis which will admit of the defendant's innocence, it is your duty under the law to do so and if you have a reasonable doubt of his guilt you should acquit him.

(Sackett—Vol. 2—Pg. 1739.)

Refused (Sgd.) J. T. D. [71]

13. INSTRUCTION No. 10.

The jury are further instructed that the presumption of innocence is not a mere form, to be discharged by the jury at pleasure, but is an essential, substantial part of the law of the land, and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption, and to acquit the defendant, unless the evidence in the case convinces them of his guilt as charged, beyond all reasonable doubt.

(Sackett—Vol. 2—Pg. 1694.)

Refused (Sgd.) J. T. D. [72]

12. INSTRUCTION No. 12.

The Court instructs the jury that certain police officers and detectives have testified in this case on behalf of the United States, and that, under the law, in weighing their testimony greater care should be

used, because of the natural unavoidable tendency of such persons in procuring and stating evidence against the accused.

(Sackett—Vol. 2—Pg. 1771.)

Refused (Sgd.) J. T. D. [73]

15. INSTRUCTION No. 13.

The testimony of detectives and informers, whose business it is to secure evidence, should be examined and weighed with greater care than that of witnesses wholly disinterested.

(Hughes—Sec. 224—Pg. 216.)

Refused (Sgd.) J. T. D. [74]

16. INSTRUCTION No. 14.

If, after consideration of the whole case, any juror should entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror so entertaining such doubt not to vote for a verdict of guilty, nor to be influenced in so voting for the single reason that a majority of the jury should be in favor of a verdict of guilty.

(Hughes—Sec. 301—Pg. 299.)

Refused (Sgd.) J. T. D. [75]

17. INSTRUCTION No. 15.

Each juror must be satisfied beyond a reasonable doubt that the defendant is guilty as charged, before he can, under his oath, consent to a verdict of conviction. If any one of the jurors, after having duly considered all the evidence, and after having consulted with his fellow-jurymen, entertains such

reasonable doubt, the jury cannot, in such case, find the defendant guilty.

(Hughes—Sec. 301—Pg. 299.)

Refused (Sgd.) J. T. D. [76]

18. INSTRUCTION No. 16.

The Court instructs the jury that it is not sufficient that the circumstances coincide with, account for, and therefore render probable the guilt of the defendant. They must exclude to a moral certainty every other reasonable hypothesis.

Refused (Sgd.) J. T. D. [77]

19. INSTRUCTION No. 17.

You are further instructed that the presumption of law is in favor of the innocence of the defendant, until his guilt is established, by the evidence to the satisfaction of the jury beyond a reasonable doubt; and if, upon full consideration of all the facts and circumstances in evidence, you entertain a reasonable doubt of his guilt, you should give him the benefit of it and acquit him. It is difficult to define in exact terms the nature of a reasonable doubt. It may be said to arise from a mental operation and exists in the mind when the judgment is not fully satisfied as to the truth of a criminal charge or the occurrence of a particular event, or the existence of a thing. It is a matter that must be determined by the jury, acting under the obligations of their oaths and their sense of right and duty. If, from an examination and consideration of all the facts and circumstances in evidence taken in connection with the charge of the Court, you are not satisfied

beyond a reasonable doubt that the defendant is guilty as charged in the indictment, you will return a verdict of acquittal.

U. S. vs. Ybanez, 53 Fed. Rep. 536.

Refused (Sgd.) J. T. D. [78]

20. INSTRUCTION No. 48.

The Court further instructs you, Gentlemen of the Jury, that the defendant has interposed in this case the defense of what is known in law as an alibi; that is, as he claims, that he was at another place at the time of the commission of the alleged crime, and therefore was not, and could not have been, the person who committed the crime charged. All the evidence should be carefully considered by you, and, if the evidence on this subject, considered and compared with all the other evidence in the case, is sufficient to raise in your minds a reasonable doubt as to the guilt of the defendant, you should acquit him.

The defendant is not required to prove an alibi beyond a reasonable doubt, or even by a preponderance of evidence. It is sufficient to justify an acquittal if the evidence upon that question raises in your minds a reasonable doubt of his presence at the time and place of the commission of the crime charged, if you find that a crime was committed. And you will understand, also, that the attempt of the defendant to prove an alibi does not shift the burden of proof from the prosecution, but that the prosecution is bound to prove beyond a reasonable doubt

that the defendant was present at the place of the alleged crime at the time of its commission.

Branson's Instructions to Juries, Sec. 371;

Glover vs. U. S., 8 Ann. Case. 1185 and note;

8 R. C. L. p. 224;

16 C. J. 558.

Refused (Sgd.) J. T. D. [79]

INDEX.

WITNESSES.

	Direct	Cross	Re- Dir.	Re- Cr.
For Government:				
M. B. Bairos	2	4		
Eunice C. Alapa.....	6	25	79	83
Mrs. Marie J. Aylett.....	83	85	88	
Arthur McDuffie	39	95		
W. K. Richardson	98	101	101	102
W. K. Wells	103	112	131	132
C. T. Stevenson.....	134	136		
Yasuhei Kamihara	136	150		
Motion for directed verdict.....	174			
For defendant:				
Sui Chin Tai.....	183	196	211	211
Hoon Wai	212	221		
Mrs. Tom Lee See.....	245	252	258	259
Won Tim	260	268		
You Lum	278	284	297	
W K. Richardson	299	301		
Lee Choy	308	335		
REBUTTAL:				
En You Kan.....	424	426	430	431
S. Matsuda	432	446	481	482

SURREBUTTAL:

Lee Chuck	483	486
Lee Choy	488	
Charge to Jury	491	
Exceptions to charge	505	

EXHIBITS:

Two tins Opium, Exhibits "A" and "B" for Govt....pg.	3
Jacket and 18 tins, Exhibit "C" for Govt.....pg.	87
Drawing, Defendant's Exhibit "1".....pg.	157
[80]	

In the District Court of the United States, in and
for the District and Territory of Hawaii.

No. 3259.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

Transcript of Testimony.

Transcript of testimony taken in the above-entitled matter, before the Honorable J. T. DeBOLT, one of the judges of the aforesaid District Court, and a Jury, at the Federal Court Room, Honolulu, T. H., on Monday, November 6th, 1922, at 9 o'clock A. M.

FRED PATERSON, Esq., Assistant United States Attorney, representing the Government, and

BARRY S. ULRICH, Esq., of the firm of Messrs. THOMPSON, CATHCART & ULRICH,

representing the defendant. The defendant was also present in person.

R. N. Linn, shorthand reporter.

WHEREUPON, the following proceedings were had and done and testimony taken, to wit:

(A jury was duly called, impaneled and sworn to try the case.)

The COURT.—All witnesses, except the one on the stand, will remain outside of the courtroom during the progress of the trial. [81—1]

Testimony of M. B. Bairos, for the Government.

M. B. BAIROS was duly called and sworn as a witness for the prosecution, and testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. State your name, please.

A. M. B. Bairos.

Q. I ask you to open this package (indicating package). I will assist you in opening it. (Package opened.) Have you seen this package before?

A. I have.

Q. Where did you see it?

A. At the office of the narcotic agents; Mr. Wells' office.

Q. That was downstairs here in the Federal Building? A. Yes, Federal Building.

Q. And you positively identify this coat?

A. Yes, I marked it here with my initials,—different places.

Mr. PATTERSON.—Mr. Ulrich, you will admit

(Testimony of M. B. Bairos.)

Mr. Bairos' qualifications as a chemist? You know that he is.

The COURT.—He has testified before here as an expert.

Mr. ULRICH.—I will admit he is a chemical expert and has some knowledge of opium, for the purpose of qualifying him to say if it is opium.

Q. Did you examine any of these cans?

A. Yes, I examined two of these cans. There is one of them and here is the other. (Witness picks out two of the tins from the package.)

Q. Now, who were these tins personally delivered to you by? [82—2] A. By Mr. Wells.

Q. Who sits here?

A. Narcotic agent. Yes, he opened up this bag and I took at random two of these tins. I picked up two cans at random.

Q. These two cans now in your hand? A. Yes.

Q. Did you make any examination of the contents of these cans?

A. I examined them physically and chemically.

Q. What is the contents of these tins?

A. Why, smoking opium.

Q. You are positive of that?

A. I am positive it is smoking opium.

Mr. PATTERSON.—I would ask at this time that these two cans of opium be received in evidence and marked United States Exhibits "A" and "B" respectively.

Mr. ULRICH.—No objection.

(Testimony of M. B. Bairos.)

The COURT.—They will be received and so marked.

(Two tins received and marked respectively Government's Exhibit "A" and "B.")

The COURT.—As I understand you, you took these two tins out at random?

A. At random. I shut my eyes and picked out these two tins.

Q. That is they contain smoking opium which is a narcotic, Mr. Bairos? A. Yes.

Q. After you had examined these cans what did you do with them? [83—3]

A. I returned them to Mr. Wells, narcotic agent Mr. Wells, in his presence, and saw them put back in this package and sealed.

Q. When you first interviewed Mr. Wells was the package sealed?

A. The package was sealed.

Q. Did he open it in your presence?

A. He opened it in my presence, broke the seals in my presence, and I took the sample as I said before, at random from this jacket.

Q. And then after you had conducted this examination you returned the two cans?

A. I did personally.

Q. Were they in your custody all the time?

A. They were.

Q. Did Mr. Wells receive them, put them back in this jacket? A. He did.

Q. And seal them up, seal the package up again?

(Testimony of M. B. Bairos.)

A. In my presence, under the same conditions as I explained in Court this morning.

Cross-examination.

(By Mr. ULRICH.)

Q. Mr. Bairos, you said you got these from Mr. Wells?

A. Picked them from the package in the presence of Mr. Wells.

Q. You took these two tins and opened them?

A. Yes.

Q. You made no examination of the rest of them, they appeared to be the same?

A. I did not. [84—4]

Q. What kind of opium is that?

A. Smoking opium; prepared smoking opium.

Q. Is it the usual kind of smoking opium that you are most familiar with?

A. Yes, sir; as far as I could see, yes.

Q. Does it spoil the product to open it up, keep it open? A. No.

Q. You are sure these are the same two tins that you opened? A. I am.

(Witness excused.)

(Thereupon an adjournment was taken until 9 o'clock A. M. Wednesday, November 8, 1922.)
[85—5]

On Wednesday, November 8th, 1922, at 9 o'clock A. M., all parties being present in court as before, the following further proceedings were had and done and testimony taken:

(Jury all present.)

Testimony of Eunice C. Alapa, for the Government.

EUNICE C. ALAPA was duly called and sworn as a witness for the prosecution, and testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. What is your full name?

A. Eunice C. Alapa.

Q. Where do you live? A. Quong Tong Lane.

Q. In Honolulu? A. In Honolulu.

Q. How long have you been living in Honolulu?

A. One year the 10th of October.

Q. Do you know the defendant? A. Yes.

Q. What is his name? A. Lee Choy.

Q. And about how long have you known him, Mrs. Alapa?

A. A little over two weeks before the night of the 18th.

Q. The 18th of October you are speaking of?

A. October, yes.

Q. When did you first meet him? Just state the occasion when you first met him this time, two weeks prior?

The COURT.—Occasion, circumstances. [86—6]

A. He drove to my house in Kamihara's car. He drove to my house in Kamihara's car and I think they stopped the machine in front of my house. I heard the machine stop, and so pulling the curtain aside,—I walked to the veranda to see who it was and Lee Choy got out of the machine and instructed

(Testimony of Eunice C. Alapa.)

the driver to turn the car. I talked to this gentleman on the verandah. He told me he wanted to see me on business. I asked him what kind of business. He didn't say anything then for a few minutes, and he said, "Can I come in the house?" and I said, "Why, no, if you want to see me I will go out." We took a ride in the machine. At first, before we went riding, he said that he had a little business to attend to and he would send the car back after me. I went in and dressed and he went away with the chauffeur, and in about 15 minutes the chauffeur came back and I asked the chauffeur where he was and he said, "Down Nuuanu Street," and we drove down Nuuanu Street, turned into some lane—the name of the lane I do not know,—and after we had turned into the lane we waited for several minutes and I did not see Lee Choy and I told the driver to blow the horn, and he blew the horn about three times, and just as we were ready to leave he came out, got in the machine with me, and after he got in the machine we went out for a ride. It was then he told me what he wanted to see me for.

Q. What did he want to see you for?

A. He wanted to see me, wanted me to meet steamers and take opium off of them.

Q. Did he mention any steamers? [87-7]

A. Yes, "President Wilson, "President Lincoln," and all the President steamers.

Q. Did he say where this opium was coming from? A. From China.

(Testimony of Eunice C. Alapa.)

Q. Did he have any particular reason that he had chosen you for this employment?

A. He said that he had had a woman smuggle for him before and that she had left, and he was looking for another woman.

Q. Did he say why he wanted a woman?

Mr. ULRICH.—Object to the question, if the Court please. Any suggestion that he said this or that. He could ask for everything that he said on this occasion.

The COURT.—She answered he said he wanted a woman. Perhaps that is a little better way.

Mr. PATTERSON.—I will withdraw the question.

The COURT.—Usually that is the better practice.

Q. Mrs. Alapa, you said, you testified, that he said that he wanted a woman. Was there anything else said?

A. Well, yes, there was something else said. I asked him why and he said because they could get away with it better; they did not examine women coming off the steamers.

Q. He said they did not examine them coming off the steamers? A. Yes.

Q. You say this was two weeks prior to the 18th of October? A. Yes.

Q. And was there anything else said that night?

A. Yes, there was something else said.

Q. What else was said? [88-8]

A. Well he told me that he had been having

(Testimony of Eunice C. Alapa.)

opium coming in on these steamers, and that he wanted me to go there and smuggle. I told him I did not want—

The COURT.—A little louder.

A. He asked me to go to the steamers and smuggle. I told him I did not like to do that kind of thing, I had never did it. I told him I could not get on the steamers and he said yes, go right on the steamers, they would ask me if I was a passenger and I was to say that I was.

Q. Was anything else said?

A. I asked him when the steamers would be in, and he said in about two weeks.

Q. Then where did you go,—what did you do?

A. I went home.

Q. Did he take you home in the car?

A. He drove in the same car with me until we got to the lane, Nuuanu Street, and I had the driver stop the car, and I walked in to my house. I didn't have the car drive in.

Q. Did you see Lee Choy after that?

A. Not until the night of the 18th.

Q. The night of the 18th of October? A. Yes.

Q. Where did you see him on this particular night? A. He came to my house.

Q. Quong Tong Lane? A. Yes.

Q. About what time of the night?

A. About 9:40 or a quarter to ten. [89-9]

Q. And did he come in the house?

A. Yes, he came in the house.

Q. And what did he have to say this time?

(Testimony of Eunice C. Alapa.)

A. He came in and said he was working. I asked him what kind of work, and he said the steamer was in, that he wanted me to go to the steamer.

Q. Was there anything else said?

A. Yes, he said that he would give me \$300 for two trips, and that two trips would have to be made before 11 o'clock.

Q. Was there anything else said?

A. Yes, I told him again that I didn't think I could get on the steamer, and he said he would go ahead and tell them, and that the inspector would ask me if I was a passenger, and I was to say that I was, and when I came off the steamer that they would not examine me.

Q. He told you they would not examine you?

A. He did.

Q. What did you do then, Mrs. Alapa?

A. I did not go right at once. I thought it over and I finally dressed and I went.

Q. You finally dressed and went? A. Yes.

Q. How did you get down to the steamer?

A. In Hara's, Kamihara's car.

Q. Where did you ride?

A. In the back seat with Lee Choy.

Q. Was there anybody else in there besides Lee Choy, Kamihara the driver, and yourself? [90-10]

A. No, sir; there was not.

Q. Where did you go? A. To pier 7.

Q. Pier 7, that is along down here on the waterfront?

(Testimony of Eunice C. Alapa.)

A. To pier 7, where the "President Wilson" was docked.

Q. That is the waterfront of Honolulu harbor?

A. Yes.

Q. As you arrived at the steamer was there anything took place?

A. Before we arrived at the point the car stopped and Lee Choy got off the car and went ahead of me, told the driver to stop the car, at the point he stopped at, and told me to follow in two or three minutes, that he would go on the steamer ahead of me.

Q. You say he jumped off before the car stopped?

A. Yes.

Q. Did you notice where he went?

A. He went to pier 7, toward that pier.

Q. And then a few minutes afterward the car stopped and you got out? A. Yes.

Q. Where did you go to?

A. I went up pier 7 to the steamer.

Q. Did you go on the steamer? A. I did.

Q. Did you have any difficulty getting on?

A. The customs inspector asked me if I was a passenger and I told him that I was.

Q. What happened then?

A. He did not say anything. I walked toward the steamer. [91-11]

Q. What happened then when you got on the steamer?

A. When I got on the steamer, Lee Choy was at the head of the gang-plank waiting for me and

(Testimony of Eunice C. Alapa.)

told me to follow him, which I did. He took me to the room where the opium was. The opium was not in the room,—but to the room where they put it on.

Q. Where was this room?

A. Well, it was in the bottom of the steamer some place. It appeared to be a stateroom of the cooks and waiters, I believe, of the Chinese.

Q. And after you arrived in this room what happened?

A. I arrived in the room, there was two or three Chinese in there, and they talked in Chinese. Well, Lee Choy was there, in there, and finally somebody brought a coat with opium in it, and I unbuttoned the top of my dress and slipped it down. He held the jacket. I put my arms in the jacket and tied it on.

Q. Who held the jacket? A. Lee Choy.

Q. The defendant who sits here with counsel?

A. Yes.

Q. You put these,—this smuggler's coat on?

A. Yes, I put it on.

Q. Did Lee Choy say anything?

A. He told me to hurry up.

Q. What did you do then?

A. I slipped my dress on and buttoned it. He told me there would be Chinese, Chinese to take me back to the gang-plank, and when I left there was a Chinese standing there who started to walk and I followed him and left [92-12] the steamer.

Q. Did you go down the gang-plank? A. Yes.

(Testimony of Eunice C. Alapa.)

Q. Where did you go from there?

A. Off the pier to Kawihara's car.

Q. When you arrived at the car what did you do?

A. When I arrived at the car I got in the car and waited for Lee Choy.

Q. How long did you wait?

A. About three or four minutes.

Q. Just a short space?

A. Just a very short time.

Q. Did Lee Choy come? A. He did.

Q. What did he do?

A. Got in the same car with me and instructed the driver where to go.

Q. Did which?

A. Got in the same car with me and instructed the driver where to take the car.

Q. Where did you go from there?

A. Well, I don't know the name of the place.

Q. You don't know the name of the place. It was some place in Honolulu?

A. Yes, it was in Honolulu.

Q. The three of you, that is the driver, Lee Choy and yourself went to this particular place?

A. Yes.

Q. When you arrived at this place what happened?

A. He instructed the driver where to drive the car, and [93—13] the driver followed instructions, and he finally told him to stop the car, and when the driver brought the car to a stop he and I, Lee Choy and I, got out of the car and went to a

(Testimony of Eunice C. Alapa.)

Chinese house, and that is where we left the opium.

Q. What did you do when you got inside of the house?

A. When I got inside of the house I saw a Chinese lady, and I unbuttoned my dress and took off the opium and laid it on a little stand that was in the center of the room, and Lee Choy picked up the opium and laid it over in the chair, and he and the Chinese woman talked in Chinese, and I got it was about a tin of opium, there was one tin missing, so he said, 19 tins in the first trip.

Q. After this what happened, Mrs. Alapa?

A. After this I told him I did not think we had better go back, and he said yes, it was nearly 11 o'clock, they changed custom inspectors at 11, we should go back right away and make one more trip, and we got in the machine and went back to pier 7.

Q. When you arrived at pier 7 what did you do?

A. Before we arrived to the pier he got off the car as he did the first time, and went on the steamer ahead of me, and I followed in a few minutes after him, and he was waiting at the head of the gang-plank, the same as he was before.

Q. You went back in the same car?

A. Yes, the same car.

Q. Kamihara drove again? A. Yes. [94—14]

Q. Do you know this man Kamihara? A. Yes.

Q. Is this the man? (Indicating man who entered courtroom.) A. Yes, sir.

(Testimony of Eunice C. Alapa.)

Q. You drove back. That is the man you made the first trip with? A. Yes.

Q. He was the driver all the time?

A. Yes, he was the driver all the time.

Q. And the second trip you say you were back to the pier, were you, that night? You just arrived back to the pier, in your testimony.

A. Before we got to the pier Lee Choy got off the machine as he did the first time, and went ahead of me, told me to wait two or three minutes and then follow him.

Q. And when he got off did you notice where he went to? A. Went to pier 7.

Q. What did you do?

A. Stayed in the machine two or three minutes, and then I went to pier 7.

Q. Did you follow him?

A. I followed him.

Q. Where did you go?

A. I went on the gang-plank. The custom's inspector did not say anything to me the second time, and I walked right on the steamer and met him at the head of the gang-plank as I did before, Lee Choy.

Q. What did he say?

A. I followed him as I did before, this time going [95—15] to the first-class passenger's room.

Q. What happened when you arrived in this room?

A. When I arrived at the stateroom we went in

(Testimony of Eunice C. Alapa.)

the stateroom and sat down and in a little while the Chinese brought the opium to the stateroom.

Q. You went into this first-class passenger's stateroom? A. Yes, sir.

Q. Who was in there? A. Nobody.

Q. After you had— Did you see Lee Choy on this second trip?

A. Lee Choy was with me.

Q. You went into the stateroom together?

A. Yes, we went into the stateroom together.

Q. What happened after you got inside of the stateroom?

A. It was very hot in the stateroom, and he turned on the fan and sat down for awhile.

Q. Then what happened?

A. Then some Chinese brought the opium.

Q. How was this opium brought, Mrs. Alapa?

A. It was brought in a kind of a vest made of some kind of white material, had pockets in it, tied in the front with little strings.

Q. You see this vest. I will ask you whether or not you recognize it?

A. It looks like the same vest.

The COURT.—How is that? [96—16]

A. It looks like the same vest.

Q. It looks like the same vest that was put on you on this particular night? A. Yes.

Q. Who put it on? A. Lee Choy.

Q. Did he have it in his hands?

A. He held it in his hands like that, and I slipped my arms over it.

(Testimony of Eunice C. Alapa.)

Mr. PATTERSON.—I ask that this vest, together with the 18 tins of opium, be received in evidence.

Mr. ULRICH.—I am not sure she identified it.

The COURT.—Did you observe any marks?

A. It had the same kind of stamp on it. Well, the second trip I had a different vest.

Mr. PATTERSON.—I ask that it be marked for identification, if your Honor please.

The COURT.—You did not have the same vest the second time as you did the first time?

A. No, but they were not made the same.

Q. You say that Lee Choy put this vest on you?

A. He held the vest up like you did here, and put my arms in it.

Q. What happened then, Mrs. Alapa?

A. The second time?

Q. After you had the vest on.

A. After I put my arms in and tied it and put my dress on, put my dress back.

Q. Did you have a cape that night?

A. Yes, I did. [97—17]

The COURT.—Have you that cape with you?

A. No.

Q. Have you it at home? A. Yes.

Q. Will you produce it in court? A. Yes.

The COURT.—The jury ought to be able to see the facts as nearly as possible as they occurred.

Q. After you had the jacket tied then what happened?

A. I followed a different Chinese that time to the gang-plank. Lee Choy told me to leave, and he

(Testimony of Eunice C. Alapa.)

would get in the machine in a few minutes, he would be out, so when I opened the door I saw a Chinese standing there, so he started walking and I followed him, followed him to the gang-plank and he remained on the steamer and I left, and when I came off the second time is when I was arrested.

Q. You came down the gang-plank. Where did you go after you got off the gang-plank?

A. The second time? A. Yes.

A. I was arrested. After I left the pier, pier 7, to the street, I was arrested.

Q. Do you know who arrested you?

A. Mr. Stevenson.

Q. Now, state just what occurred when you first saw Mr. Stevenson that night?

A. Well, when I came off the pier to the street I was stopped by three or four gentlemen, Mr. McDuffie, Mr. Stevenson and Mr. Wells, and another gentleman, I do not know his name, and they asked me if I had any liquor on [98—18] me and I told them no, and they asked me what else I had on me and I did not answer, and then they arrested me, and they said they would take me to the police station, and also the driver of the machine, Kami-hara.

Q. They took the two of you to the police station?

A. They did.

Q. This was before you arrived at the automobile, was it?

A. Yes, they arrested me on the street.

(Testimony of Eunice C. Alapa.)

Q. What did they do after they arrested you?

A. They arrested me and drove me to the police station and took me to a room and brought the matron in and took the opium off of me.

Q. Who did you sit by in the car?

A. By Mr. McDuffie and that other gentleman, I do not know his name, tall, slender gentleman, I don't know what his name is.

Q. Was there any conversation about opium?

A. Yes, there was a conversation about opium.

Mr. ULRICH.—I object to that.

Q. Was there any conversation took place—

Mr. ULRICH.—Objected to.

The COURT.—Any conversation which he may have had with anybody in the defendant's presence would be evidence.

Mr. PATTERSON.—This was merely developing how this opium was discovered by the officers for the purpose of identifying the opium more than anything else.

(Argument.)

(Objection sustained.)

Q. Who took this opium off? [99—19]

A. The matron at the police station.

Q. Did you see it delivered to anyone by her?

A. Why, after she took it off of me I think some of the officers picked it up. I don't know what they did with it.

Q. Did you see them pick it up?

A. No, sir, I did not. I left the room as soon as she took it.

(Testimony of Eunice C. Alapa.)

Q. You left the room as soon as she took it off of you? A. Yes.

Q. And you were placed under arrest then, were you?

A. I was placed under arrest at the street in front of the pier.

Q. Did you see this opium afterwards?

A. I saw it when the officers brought it to your office.

Q. Did you recognize it in there, in my office?

A. Yes.

Q. You recognized it as being the same jacket, the same opium? A. Yes.

Q. Did you have any further experience after you arrived? After you got in this automobile that night what happened, Mrs. Alapa?

A. Before we went to the police station?

Q. Yes.

A. They took me to the police station, took the opium off of me, and after I had taken the opium off they asked me what I had done with the first load, I took off the stuff, where I had taken it, and I told them I could not tell them. [100—20]

Mr. ULRICH.—I object to any conversation that took place between this witness and McDuffie.

The WITNESS.—They asked me what I had done with the first trip.

The COURT.—I suppose nothing more could follow, just repeating her story.

Mr. PATTERSON.—I want to show that sub-

(Testimony of Eunice C. Alapa.)

sequently the woman and the officers were out to the place where the first opium was taken.

Mr. ULRICH.—I am objecting to any conversation. She could have told all kinds of stories to McDuffie about where the opium might be found. Perhaps it was found; perhaps it was not found. The only thing we are interested in is what actually happened; cannot go into a conversation.

The COURT.—I am inclined to feel that any conversation with this woman, that this witness may have had with others in the absence of the defendant is objectionable.

Q. You got in this automobile with McDuffie, and Inspector Stevenson, is that correct?

A. And Inspector Wells.

Q. He was there also?

A. And the other gentleman, that I do not know his name. I believe he is a prohibition man.

Q. The second gentleman? (Indicating.)

A. Mr. Stevenson was along too.

Q. Mr. Wells? A. Yes.

Q. And another man?

A. Mr. Stevenson, Mr. Wells and the gentleman on this side. [101—21]

Q. (Addressing man standing in doorway.) Your name is Mr. Wrinckel?

Mr. WRINCKEL.—Yes.

Q. That is the gentleman who just spoke?

A. Yes.

Q. You say you went to the police station, is that correct, with these three gentlemen and McDuffie?

(Testimony of Eunice C. Alapa.)

A. Yes.

Q. Were you in an automobile?

A. I was in Hara's automobile.

Q. Who else was in Hara's automobile?

A. Well, when I first got in the machine Mr. Stevenson was alongside of me and he felt the opium on me, and he says, "She is loaded with it" and they took me to the police station. I don't remember if it was Mr. McDuffie sat on the other side of me or Mr. Wells. It was one of them.

Q. After you got to the police station where did you go?

A. After the matron had taken the opium from me they asked me to take them to the place where I took the first load of opium. I told them I didn't know the name of the place, or the street, and they told the chauffeur to drive them where he had stopped and I went with them, and identified the house that I had left the opium.

Q. From there where did you go?

A. They searched the house and could not find the opium and then we went back to the police station. [102—22]

Q. Was there anything happened on the way to the police station? A. Yes.

Q. What was it?

A. Lee Choy was in a car with another Chinese and some chauffeur driving and his car passed our car and I identified him and they stopped his car.

Q. They stopped Lee Choy's car? A. Yes.

Q. And what happened then?

(Testimony of Eunice C. Alapa.)

A. The other Chinese that was in the car with Lee Choy got out of the machine and held a conversation with McDuffie on the street; and then I think it was Mr. Wells brought Lee Choy out of that car to the car I was in, and asked me if that was the man and I said, "Yes."

Q. Were you positive that that was the same man? A. Yes.

Q. You are positive it is the same man that sits here to-day? A. Yes.

Q. Then what happened?

A. They put him in the machine with me, Lee Choy, and then Mr. McDuffie got in the back with us and we went to the police station.

Q. McDuffie was in the back?

A. Yes, McDuffie was in the back seat.

Q. After you arrived at the police station what happened?

A. Well, after we arrived at the police station they put Lee Choy and the driver in jail and someone released them. I don't know who it was. I think Mr. Carden telephoned to Mr. Brown first, and I believe [103—23] Mr. McDuffie talked to Mr. Brown, attorney Brown, and then the Chinese, that was in the car with Lee Choy, he also talked to Mr. Brown.

Q. Do you know that Chinese?

A. Why I think I could identify him. I am not positive. I had never seen him before.

Q. You think you could identify him? A. Yes.

Q. A Chinaman talked to Brown?

(Testimony of Eunice C. Alapa.)

A. This Chinese we had in the car with Lee Choy talked to Brown in the police station, and talked to—

Q. Talked to McDuffie also? A. Yes.

Q. He was in the car with Lee Choy when you identified Lee Choy? A. This other Chinese?

Q. Yes? A. Yes.

Q. Who was driving that car, a Chinaman or Japanese? A. Japanese.

Q. You believe it was a Japanese. And do you know Mr. Brown?

A. I met Mr. Brown for the first time at his office at 8:30 the next morning, the morning of the 19th.

Q. Who told you to go there?

Mr. ULRICH.—That is objected to. What Difference could it make who told her to go there.

A. This Chinese.

The COURT.—I think the answer might be subject to a motion to strike. If she should say Lee

Choy it is [104—23] material. The question is proper. I think the answer might be subject to a motion to strike. The objection will be overruled.

Mr. ULRICH.—Exception.

The COURT.—Exception allowed.

A. The Chinese that was in the car with Lee Choy.

Mr. ULRICH.—I move to strike that. I do not know anything about the Chinaman around the police station there.

Mr. PATTERSON.—I want to show by this

(Testimony of Eunice C. Alapa.)

witness that Lee Choy and herself were both represented by Mr. Brown the next morning, Mr. Ching Tai sent her there.

The COURT.—How is the defendant responsible for what this other Chinese said, although they happened to be in the same car together. If she had said Lee Choy it was material and proper. The motion to strike will be granted and the jury will disregard the answer. There is one further suggestion, Mr. Patterson, if this other Chinaman suggested that in the presence of Lee Choy, if it was in his presence, it has a different phase.

Q. Did this all happen in the city and county of Honolulu, Territory of Hawaii? A. Yes.

Q. All these things you have related down there?

A. Everything that I related.

Q. You say this was on the night of the 18th of October of this year? A. Yes.

Q. Who do you live with, Mrs. Alapa?

A. My husband's grandmother.

Q. That is the old lady who sits here with you this [105—24] morning? A. Yes, sir.

Cross-examination.

(By Mr. ULRICH.)

Q. Mrs. Alapa, you say you have lived in Hawaii about a year and a half?

A. Yes, sir, about a year and a few days, the 10th day of October I was here one year.

Q. You are married? A. I am married, yes.

Q. Your husband is living here?

A. My husband is dead.

(Testimony of Eunice C. Alapa.)

Q. Before you lived here you lived where?

A. In the United States.

Q. On the coast, San Francisco?

A. No, in Oregon.

Q. Portland? A. No, Pendleton.

Q. And you have lived where you now live for how long? A. About four months.

Q. Where did you say that was?

A. Canton Lane.

Q. You live there with your husband's grandmother? A. Yes.

Q. You never saw Lee Choy say two weeks prior to that date of this occurrence you have told us about, is that right? A. I never did.

Q. On that occasion he called at your house?

A. Yes, sir. [106—25]

Q. And about what time of the day was it?

A. It was in the evening, around 8:30 I believe.

Q. Around 8:30 in the evening. I am going to ask you if you cannot place that date a little more definitely than about two weeks. Can you say on what day of the week it was?

A. I don't remember that. I remember it was about two weeks, because he said the steamer would be in in two weeks.

Q. That is the only way you have of saying it was about two weeks? A. Yes.

Q. You have no idea as to what day of the week it was?

A. I don't remember the day, or the exact date.

(Testimony of Eunice C. Alapa.)

Q. Had you known this driver who brought him to your house before this time? A. Yes, sir.

Q. What was his name? A. Kamihara.

Q. Had you used him to drive around town with before this?

A. I had him drive me for about eight months.

Q. So that you knew him quite well?

A. I knew him very well.

Q. When they went over there that evening was Lee Choy brought to you by this driver? That is, did the driver bring him in and say, "This is Mr. Lee Choy"? A. No, the driver did not.

Q. Did Lee Choy simply come into the house himself? I believe you said he did not come into the house. [107—26]

A. He did not come into my house; he came on the porch, the veranda.

Q. And rang the bell?

A. I heard the car stop, walked out on the veranda; heard the car stop and he came up to the veranda. All our conversation was on the veranda.

Q. And you knew him from that time, of course?

A. From that time.

Q. And knew him as Lee Choy?

A. I did not know his name.

Q. When did you first learn his name?

A. I learned his first name from him, but not his last.

Q. What is his first name? A. Lee.

Q. He told you his first name was Lee?

(Testimony of Eunice C. Alapa.)

A. Yes, and I found out his full name at the police station.

Q. You knew him before the time of your arrest simply as Lee? A. Yes.

Q. Did he tell you the name was Lee the first day he was there? A. No, he did not.

Q. When?

A. The night we were going to the steamer, that is when he told me his name was Lee.

Q. You asked him what his name was or he volunteered it? A. He said so.

Q. He said it was Lee? A. Yes.

Q. On this evening, 8:30 as near as you can remember [108—27] it, this man came on your porch and you and he had this conversation on your front veranda?

A. We did not have any conversation in regard to the opium on the veranda; we had a conversation in regard to going for a ride and talk some business, but I didn't know what the business was.

Q. But whatever the conversation was, was it had on your front veranda at 8:30 at night?

A. Yes.

Q. Is your house close to the street or is it back in the yard?

A. Right close to the street, right on the line.

Q. Now then he said to you that he wanted to talk business with you? A. He did.

Q. Did you ask him what the character of the business was that he wanted to talk to you?

A. I did.

(Testimony of Eunice C. Alapa.)

Q. And what did he say about that?

A. Well, he said he would go inside, and I said no, I did not let him in my house.

Q. Why didn't you let him in the house?

A. Because I didn't want to. I didn't know him, but I knew the driver.

Q. It was against your practice to allow men whom you did not know to come in your house?

A. Yes.

Q. Was your mother-in-law, your grandmother-in-law, at home at that time?

A. Yes, she was at home at that time. [109—28]

Q. Now, as I understand the substance of the conversation that was had at that time, was simply that he wanted to talk business with you and asked you to come in? A. And I said no.

Q. Would not let him in the house?

A. I would not let him in the house.

Q. Then he suggested, who suggested the ride?

A. He suggested.

Q. That you come and ride with him. Then what happened?

A. He told me that he had a little business to attend to before I would ride with him, and he told the driver to take him some place, I did not know where they went, went down Nuuanu Street, and in about 15 minutes,—in the meantime I dressed, in 15 minutes or so the driver came back and picked me up, and we drove down Nuuanu Street, and the driver turned down into a lane and I asked the driver where he was.

(Testimony of Eunice C. Alapa.)

Q. Do you know Mrs. Alapa who it was that sent him to you, or do you know of your own knowledge how it was that he came to you as a woman likely to be available for this smuggling?

A. No, I did not know that.

Q. You don't know whether the driver brought him there to you? A. No, I don't know.

Q. From your house then on this lane,—by the way where is that lane?

A. It is above School Street, the first lane to the right of Nuuanu.

Q. You drove over to Nuuanu Street? [110—29]

A. Yes.

Q. In which direction on Nuuanu Street?

A. When the driver came back after me?

Q. You are going on the trip now with the driver to meet Lee Choy?

A. We drove down Nuuanu Street, past School, and toward town.

Q. Toward town and turned into some lane?

A. Turned into some lane. I do not know the name of the lane.

Q. It was nearer town than Qwong Tong Lane?

A. Oh, yes; it was nearer to town.

Q. And below School Street? A. Yes.

Q. Do you know whether it was below Kukui Street or not?

A. I don't remember that, what the street was.

Q. The best of your recollection is it was?

The COURT.—It was a lane, and not a street?

(Testimony of Eunice C. Alapa.)

A. It was a lane, I think.

Q. Running into Nuuanu Street?

A. Running on the right-hand side, I believe, of Nuuanu Street.

The COURT.—Right-hand side coming down?

A. Coming down.

Q. You drove into this lane? A. Yes.

Q. This was about what time?

A. Well this was, I think it was about 8:30 he came to my house,—possibly somewhere around 9 o'clock.

Q. Just a short time? [111-30]

A. Just a short time.

Q. How far down this lane did you go before you stopped?

A. We drove into the lane quite a space in there, and lots of little houses in there, and the driver had stopped his car and we waited there.

Q. I am trying to find out how far you went into the lane off the main road?

A. I could not tell you just how far, quite—

Q. Some distance?

A. Quite a long lane in there.

Q. Some distance? A. Quite a distance.

Q. You stopped the car and waited? A. Yes.

Q. You waited so long you became impatient and asked the driver to blow the horn?

A. I thought it was a funny place to have me drive. I didn't like it, and wanted to go back home, and told the driver to blow a horn to see if he would come.

(Testimony of Eunice C. Alapa.)

Q. What kind of business did you imagine this man would have when he asked you to take a drive with him?

A. I didn't have any idea as to what kind of business.

Q. You blew the horn and the chauffeur blew the horn, and finally this man appeared?

A. He appeared.

Q. And got in the car with you? A. Yes.

Q. And you both sat in the back seat? A. Yes.

[112-31]

Q. And then you took a drive?

A. We took a drive.

Q. Do you know where you drove?

A. Drove out toward Waikiki and to some place, I think Kapiolani Park, and back.

Q. When Mr.—, who was the driver?

A. Kamihara.

Q. When the chauffeur came in and got you he did not say anything to you about this man, did he?

A. No, he did not. He just simply drove me.

Q. On this drive to Waikiki you had this conversation with Lee Choy? A. Yes.

Q. And he explained to you that he had,—that he wanted a woman to smuggle opium for him?

A. He did.

Q. Did he tell you how much it was going to pay the woman to smuggle opium for him?

A. He did not tell me that night.

(Testimony of Eunice C. Alapa.)

Q. He explained that these various Presidents were the boats that would be—

A. Yes, he did.

Q. And told you that a boat would be in in about two weeks? A. Yes.

Q. Did he explain how he would get the opium off the boat or anything of that sort, any of the details of the transaction?

A. He said that he had had a woman taking off the boat, [113-32] but he did not say how she took it off.

Q. This, I believe you said, was the first time you had anything to do with opium smuggling?

A. Yes, sir.

Q. As a result of the conversation you had with Lee Choy while driving out toward Waikiki that evening,—by the way, first I will ask you, did you see anybody else or talk to anybody else during that trip? A. No.

Q. No one?

The COURT.—This conversation between yourself and Lee Choy, was that sufficiently loud for the driver to hear you, to understand what you were saying? A. We were not talking loud.

The COURT.—You are pretty sure no one else, so far as you know, knew you were out driving with Lee Choy that night?

A. I am positive no one else heard our conversation.

The COURT.—Did he tell you where he lived?

A. He told me he lived at 13th Avenue, Kaimuki.

(Testimony of Eunice C. Alapa.)

The COURT.—Anything else?

A. But I found out afterwards he did not live there.

Q. Did he tell you anything else about his personal affairs?

A. He told me he had some relatives on Fort Street running a store.

Q. Did he tell you anything about what he was doing in this lane where you went to meet him?

A. No, he did not.

Q. He did not identify that as any particular place? [114-33] A. No.

Q. As a result of this conversation you had with Lee Choy in the automobile this night, did you or did you not arrive at a definite understanding that you would smuggle opium for him?

A. I decided that I would not.

Q. You told him so? A. Yes.

Q. So that the transaction was closed as far as you were concerned, and you came back? A. Yes.

Q. Did he drive you back to your house?

A. We drove up to Nuuanu Street and when the car came to the lane I asked the driver to stop, and I got out at Nuuanu and walked into the lane.

Q. Lee Choy went away with the driver?

A. Yes.

Q. Did you have a conversation with the driver that night? A. No.

Q. None at all?

A. He came and got me and took me away.

Q. Do you know anybody who knows Lee Choy?

(Testimony of Eunice C. Alapa.)

Have you ever heard of Lee Choy before this night? A. Never have.

Q. Don't you know anything about him?

A. Didn't know anything about him.

Q. You only knew the driver from having ridden with him for several months?

A. I knew the driver. [115-34]

Q. That was two weeks before the 18th, as near as you can place it? A. Yes.

Q. You didn't see Lee Choy between that time and the time this occurrence took place, or did you?

A. I never saw him or heard from him until the night of the 18th, two weeks later.

Q. Do you remember how Lee Choy was dressed the night you saw him first?

A. He had on white sport shirt, open in the neck.

Q. A white sport shirt open in the neck?

A. Yes, one with short sleeves and opened in the neck, some kind of khaki pants, looked like they had been washed, bleached out.

The COURT.—Had no coat?

A. Had no coat on. Looked real white at night, the pants, under the lights looked almost white. I think they were khaki.

Q. Long trousers or did he have leggings?

A. I don't think he had any leggings on.

Q. Did he have a hat on?

A. Yes, he had a hat on.

Q. A straw hat?

A. I don't know what kind of a hat.

(Testimony of Eunice C. Alapa.)

Q. He did not have any coat on?

A. Didn't have a coat on.

Q. How far out did you go on Waikiki. How far out toward Waikiki did you go?

A. I think we went as far as Kapiolani Road, then out [116-35] and back Beretania Way.

Q. How far out is that?

A. Kapiolani Road is the other side of the Moana Hotel.

Q. The other side of the Moana Hotel?

A. Out past the Moana Hotel.

Q. The road that goes over to Kaimuki?

A. Yes.

Q. Then you went over to Kaimuki?

A. We went out Kapiolani, and out Kapahulu Road, and then drove back. I don't know the names of the streets.

Q. What time was it that you left and went back to the house at night?

A. I didn't look at the clock. I don't know the exact time.

Q. About 11 o'clock?

A. I don't believe it was that late.

Q. But it was,—your drive took probably three-quarters of an hour or an hour?

A. I think around 45 minutes.

Q. All right. You didn't see him again until the night of your arrest? A. I did not.

Q. And that night he came to your house?

A. Yes.

Q. And with this same driver? A. Yes.

(Testimony of Eunice C. Alapa.)

Q. And stopped in front of your house as he had done before? A. Yes.

Q. You heard the automobile stop and came out—
[117-36]

A. I did not go out. He came in.

Q. You opened the door?

A. The door was not closed. The door was open.

Q. You were there. Was anybody else there?

A. Nobody except my grandmother.

Q. Your grandmother was there? A. Yes.

Q. This aged lady is your grandmother?

A. The lady with white hair.

Q. She was there and heard everything that was said at that time?

A. She was in the bedroom reading; had the door about half closed.

Q. Her bedroom is adjoining the other room, I suppose? A. Yes.

Q. She did not see Lee Choy come in the first time?

A. No, he did not go in my house the first time.

Q. He came in and you recognized him as the man you had this ride with before? A. Yes.

Q. What did he say?

A. Said he was working to-night, I says what kind of work, and he said the steamer was in.

Q. By that you understood the steamer that the opium was supposed to come on?

A. He told me he wanted to go on the steamer, and me to make two trips from the steamer.

Q. Did you recognize,—you understood what

(Testimony of Eunice C. Alapa.)

steamer he meant and what the work was, from your previous conversation? [118-37]

A. Yes, I understood.

Q. Did you explain to him that you had told him that you would not do that sort of work for him?

A. I did. I told him I did not want to have anything to do with him.

Q. And that you had not changed your mind at all?

A. I told him I did not care to go at all. He insisted that I go and told me that it would be all right, that I could go on the steamer without any trouble by telling them that I was a passenger as they did not examine women, that I would not be bothered.

Q. When was it that he told you you would get three hundred dollars for these two trips?

A. On this night.

Q. At that time. Is that right? A. Yes.

Q. By the way, did you get any part of that three hundred dollars? A. I never got anything.

Q. When you brought your first load ashore nothing was said about payment?

A. When I brought the first load it was getting late. He wanted me to get back quick and get a second load, before 11 o'clock.

Q. But there was nothing said?

A. Nothing said about any money then.

Q. About how long were you talking there, would you say, before you finally agreed to go?

A. I think about 15 minutes.

(Testimony of Eunice C. Alapa.)

Q. Was anything said about payment being made in advance [119—38] or after the thing was done?

A. There was nothing said about when he would pay.

Q. You had no doubt but what he would pay?

A. I had no doubt but what he would pay me.

Q. You trusted him perfectly. You understood the risk you were taking in doing a thing of this kind? A. I guess I did not realize it.

Q. You understood what it was, it was a crime?

A. I understood he wanted me to smuggle opium.

Q. You knew you were committing a crime, didn't you?

A. I had never had any dealings of this kind before. I didn't know much about it.

Q. You certainly knew it was against the law to smuggle opium? A. Yes, I knew that.

Q. You knew it was something for which you might be arrested, didn't you? A. Yes. [120—(39-40)]

(From cross-examination of Mrs. Alapa, by Mr. ULRICH, Nov. 8, '22.)

Q. You made no arrangement as to how this money was to be paid to you before you took the risk?

A. I did not make any arrangements about the money. He said he would pay me \$300 for the two trips. I did not ask him for the money in advance.

Q. You got dressed then? A. I got dressed.

Q. What kind of dress did you put on?

(Testimony of Eunice C. Alapa.)

A. A white dress and blue cape.

Q. I don't know much about dresses. Was it a loose sort of dress?

A. He told me to put on the loosest dress I had. I put on the loosest dress I had.

Q. And this blue cape? A. And the blue cape.

The COURT.—Did the cape have sleeves in it, or without?

A. There is not any sleeves, just throw over your shoulder. The cape is blue on the outside, kind of henna on the inside,—lined with henna.

Q. Do you know any other Chinamen who have ever spoken to you about opium? Have you ever been approached in this way before by other Chinamen? A. I never have.

Q. You put on this loose-fitting white dress and blue cape and all this time the automobile was waiting outside? A. Yes.

Q. With Yamahara waiting with it? A. Yes.

Q. I want to know about what time, as near as you can place it, [121—41] that Lee Choy arrived at your house that night? A. About 9:45.

Q. How do you fix it as about 9:45?

A. I had been out that evening with my grandmother, and knew I got home at 9:30 when I looked at the clock.

Q. So that he came a few minutes after, and you can place it pretty definitely at about 9:45 that he came. How long was it before you started to go away? A. I think about 15 minutes.

(Testimony of Eunice C. Alapa.)

Q. It did not take you very long to decide to do this thing? A. It did not.

Q. You got in the car with Lee Choy? A. Yes.

Q. How was he dressed on this occasion?

A. Dressed in a sport shirt.

Q. The same way he had been dressed two weeks before?

A. He was dressed in a sport shirt, I told you, the night you spoke of to me.

Q. The night you had a ride to Waikiki?

A. On the first night? He had on a dark suit.

Q. So that all the testimony you have given as to the khaki trousers and the sport shirt did not refer to the occasion of the ride to Waikiki?

A. No, that was the ride the night we went to the steamer.

Q. I want to know how he was dressed the night you went to Waikiki?

A. He was dressed in a dark suit that night.

Q. He had a coat on that night?

A. He had a suit coat on, that night. [122—42]

Q. Did he have a hat on that night?

A. He had a hat on.

Q. You did not see him the first night inside of a house or in a lighted room or anything like that at all, did you? A. No, I did not.

Q. Simply outside in the automobile, and on your front porch? A. Yes.

Q. Now then this second night, the night of the opium smuggling, you left your house about 9 o'clock, that is right is it? A. About 10 o'clock.

(Testimony of Eunice C. Alapa.)

Q. 9:45 was the time he came in, and you drove down directly to the wharf? A. Yes.

Q. In the meanwhile he was explaining to you the *modus operandi*, how you were to act, what you were to say, and everything of that sort?

A. He explained those things in the car.

Q. In the car as you were going down?

A. Yes, sir.

Q. You arrived at the wharf, he told you to wait awhile and then go on the boat?

A. He got off the car before he stopped the car, and went ahead of me.

Q. Did you see anyone or talk to anyone before you were left there, before he left you there?

A. I did not talk to anyone.

Q. He left you, while you waited in the car?
[123—43]

A. He left me, and told the chauffeur where to stop the car, and for me to sit there two or three minutes and then follow him.

Q. He got out before the car stopped?

A. He got out before the chauffeur stopped the car, before we come to the point where we left it, a little ways before the chauffeur stopped the car.

Q. You mean the car stopped. How far away was it when the car stopped the first time?

A. About a block or so,—that is where he got off.

Q. He got off and told the chauffeur where to stop the car. A. Yes.

Q. And the car went on, and so far as you know he followed on foot?

(Testimony of Eunice C. Alapa.)

A. He run along and the chauffeur drove along and stopped. He went toward pier 7.

Q. You saw him running over on the pier?

A. Yes. I remained in the car.

Q. Where did you stop?

A. Stopped at the sidewalk there by the pier.

Q. You drove down Fort Street?

A. I don't know all the streets. I could not tell you what streets.

Q. You don't know whether you drove down Fort Street or the next street?

A. I don't know which.

Q. Did you drive down the street that the street-car runs on?

A. I don't know that either. [124—44]

Q. Did you stop,—you know the piers. Is this pier the pier at the end of Fort Street?

A. I don't know what street pier 7 is at.

Q. Is it at the end of a street? A. The pier?

Q. What kind of a pier is it, a pier with a wooden floor and high sides?

A. Pier 7? Why I had to go up stairs to get to the steamer.

Q. And you boarded the steamer from a sort of platform, after you had gone up the stairs?

A. After I went from the stairs along the street, up pier 7, I walked way back and went on to the gang-plank.

Q. The custom-house officer stopped you and asked if you were a passenger?

(Testimony of Eunice C. Alapa.)

A. He stopped me and asked if I was a passenger, and I told him that I was.

Q. Before you went on the gang-plank,—by the way,—where was the custom-house officer?

A. Standing right by the foot of the gang-plank. Lee Choy was on the steamer at the head of the gang-plank.

Q. Would you know that custom's officer if you saw him again? A. Yes.

Q. Was anybody else standing at the head of the gang-plank with Lee Choy?

A. There was several people there; I don't know who he was with.

Q. He was in plain view; no trouble about seeing this man? [125—45]

A. Oh, yes; had no trouble in finding him at all.

Q. Rather conspicuous, as a matter of fact, without any coat there, wasn't he?

A. Dressed all in light clothes.

Q. You went on up the gang-plank and met him?

A. Yes.

Q. Did he come right up to meet you or move off?

A. When I got off the gang-plank I stepped up to him and he says, "Follow me" and I followed him.

Q. And he lead you down into the bottom of the ship somewhere?

A. Down into the bottom of the ship somewhere.

Q. Of course you understand there is no doubt you were on that boat. I am trying to get all these details to see where you went,— You went down into the bottom of the boat? A. Yes.

(Testimony of Eunice C. Alapa.)

Q. There you met Chinamen?

A. He rapped on the door of a stateroom that some Chinese were sleeping in, and they opened the door and we went in there.

Q. Were there several Chinese?

A. Two or three.

Q. Would you recognize any of those Chinese if you saw them again?

A. No, I don't think so.

Q. You do not think you would recognize any of them. Was there any one particular Chinese who seemed to talk about with regard to the opium than any other? [126—46] A. They all talked.

Q. Did any of them talk to you in English?

A. No.

Q. All talked in Chinese? A. Yes.

Q. Where did you get this opium now?

A. This opium was not in this room. I waited in the stateroom until somebody brought it into the stateroom.

Q. By "stateroom" you mean this place where all these Chinese were sleeping and talking?

A. Yes.

Q. How many Chinese were there?

A. Two or three.

Q. Somebody brought the opium to the stateroom after you had gone to this room down in the bottom of the boat? A. Yes.

Q. Would you recognize that person who brought up the opium to that room?

(Testimony of Eunice C. Alapa.)

A. I did not see the person who brought the opium. I was sitting in a chair and they brought the opium to the door, and when I saw it it was in Lee Choy's hands. I could not identify the man who brought it to the room.

Q. So that you could not identify anybody except Lee Choy after you got on that boat? Any other person you saw who had been there and would have been able to see whether you were there?

A. I saw a lot of Chinese but they all looked about alike to me; I could not identify them.
[127—47]

Q. Were the Chinese dressed in European clothes or Chinese clothes?

A. They appeared to be through with their work, and was lying down resting.

Q. Did they have on the garb of stewards' uniforms, or were they dressed in Oriental costumes?

A. Most of them was dressed in just undershirt and some kind of white pants.

Q. And in this stateroom Lee Choy helped you put on this jacket?

A. He held the jacket and I put my arms in the jacket.

Q. To do that you had to take off the upper part of your dress? A. Yes.

Q. You just took your,— Did you take off your whole dress or just the top part of it?

A. Just simply opened it up, slipped my arms down and put the jacket on.

Q. Underneath?

(Testimony of Eunice C. Alapa.)

A. Underneath the outside gown.

Q. This was a one-piece dress was it?

A. Yes, it was a one-piece dress.

Q. And hung down pretty near to your knees?

A. The jacket you mean?

Q. Yes. A. Yes.

Q. You had room to button your dress up?

A. I had a white belt on the dress and I could not fasten my belt; I had to leave the belt be untied.

[128—48]

Q. Lee Choy assisted you to put that on?

A. He did.

Q. And fix up your dress again afterwards?

A. He did.

Q. And before you put your cape on?

A. I put my dress on, buttoned it up and put my cape on.

Q. And you went out of the stateroom?

A. He told me a Chinese would lead me to the gang-plank, so when I opened the door a Chinese was standing there and I followed him.

Q. I wonder, Mrs. Alapa, if you would be able to go onto the steamer, "President Wilson," and go to the place where you went that evening on that occasion, that is, to the stateroom; the same room?

A. I don't think I could.

Q. If it would be possible you could identify anybody, if any of the same people were there as were there on that occasion. I say that because I understand the boat is now in port.

(Testimony of Eunice C. Alapa.)

A. I don't know that I could take you to the same stateroom; there are lots of staterooms on that steamer. I did not look at the number.

Q. Do you think you could identify any of the Chinese at all?

A. I probably could identify the man that lead me to the gang-plank.

Q. He came to the door and Lee Choy told you that he would take you to the gang-plank?

A. Yes. [129—49]

Q. And he walked ahead of you?

A. He walked ahead of me.

Q. How was he dressed. Did he have on merely a shirt and trousers?

A. He was dressed in some kind of white cloth; I didn't pay much attention to him.

Q. Sort of like a steward? A. Waiter.

Q. You think you might be able to identify that man?

A. I think that I could, but I am not positive.

Q. Did he take you to the same gang-plank that you have gone on? A. Yes.

Q. Where was Lee Choy in the meanwhile?

A. He was in the stateroom.

Q. You left him behind you?

A. Yes, he told me to go ahead and wait in the machine for him outside, and he would come later.

Q. You went on down the gang-plank past the same custom officer whom you had seen before?

A. Yes, past the same custom's officer.

Q. He said nothing to you?

(Testimony of Eunice C. Alapa.)

A. He said nothing to me.

Q. Do you know whether he saw you — He saw you, didn't he, when you passed him?

A. That I do not know. I saw him.

Q. You probably were thinking about being seen at the time and would be paying pretty close attention to whether people were noticing you. Did he seem to observe you when [130—50] you went past or not?

A. He was talking to somebody I believe and he glanced at me, I think, but he didn't say anything.

Q. You went off and got in the machine?

A. Yes, I went off and got in the machine.

Q. You waited there for just a few minutes and Lee Choy came and joined you? A. Yes.

Q. Then the chauffeur drove the car to some place to which Lee Choy had directed him? A. Yes.

Q. Where was this place?

A. I could not tell you that because I do not know the lanes or the street; it was a Chinese lady's house that he took us.

Q. Do you know whether it was anywhere in the neighborhood of the house you live in?

A. No, it was not in that neighborhood.

Q. It was the same place that you went back to later with McDuffie, that is right? A. Yes.

Q. When you got to that place you and Lee Choy got out of the car? A. Yes.

Q. And you went into the house? A. Yes.

Q. And inside of the house there were present what people?

(Testimony of Eunice C. Alapa.)

A. A Chinese lady met us at the door.

Q. A Chinese lady? [131—51] A. Yes.

Q. One Chinese lady? A. Yes.

Q. Would you recognize that Chinese lady if you saw her again? A. Yes.

Q. Was it a young woman? A. Middle aged.

Q. A middle-aged Chinese lady. Was there anyone else there?

A. I did not see anyone else.

The COURT.—Q. Lee Choy went in the room with you? A. Yes.

Q. When you say you did not see anyone else, did you have any reason to believe there was anyone else around the place?

A. The place was very quiet. I walked in the room and Lee Choy walked in with me, and he was wanting me to hurry, he wanted me to go back to the steamer a second time. I did not pay any attention whether there was anybody else in the house or not. The only one I saw was the Chinese lady.

Q. Did she talk in English? A. She did not.

Q. You did not talk to her at all? A. No.

Q. She spoke with Lee Choy in Chinese?

A. Yes.

Q. You undid your dress and took your jacket off?

A. I unfastened the dress, took the jacket off, and laid [132—52] it on the stand that was in the center of the room.

Q. And she took it?

A. No, Lee Choy took it. Lee Choy picked it

(Testimony of Eunice C. Alapa.)

up and put it in a chair and then Lee Choy and the Chinese lady counted the tins of opium.

Q. And found one missing?

A. One missing, they said.

Q. Who told you that?

A. He told me there was one missing.

Q. And you left with him?

A. We left together and went back to the machine.

Q. You wanted to quit that time? A. Yes.

Q. Did you offer to quit for half the three hundred?

A. There was nothing said about the money.

Q. Nothing said about money at all?

A. Nothing at all.

Q. So you simply said you wanted to quit?

A. Yes.

Q. He wanted you to go out and get another load?

A. Yes.

Q. You went in the car together?

A. Yes, both of us.

Q. What time?

A. It was pretty close to 11 o'clock. He said we would have to hurry because at 11 o'clock they changed custom inspectors.

Q. You drove back to the boat? A. Yes.

Q. And practically the same thing happened the second [133—53] time as the first so far as getting on the boat was concerned?

A. About the same thing.

Q. He went ahead of you? A. Yes.

(Testimony of Eunice C. Alapa.)

Q. You went on and found him waiting at the top of the gang-plank? A. Yes.

Q. You went past the same custom-house officer?
A. Yes.

Q. You knew it was the same custom officer?
A. Yes.

Q. And Lee Choy, with his shirt and everything, was up at the top of the gang-plank just as he had been before? A. Yes.

Q. Do you remember whether anybody else was there on that occasion except Lee Choy, if you can remember? A. There was several people there.

Q. Mrs. Alapa, think of both times you were on that boat, all the time you were there with Lee Choy and near Lee Choy, can you think of any person you can remember that ever saw Lee Choy on the boat with you at that time?

A. The only ones I saw Lee Choy talking to was the Chinese.

Q. Did you see any white people while you were on that boat?

A. I did not see him talk to any white people.

Q. Of course the custom's officer would know probably [134—54] if Lee Choy went on the boat twice just ahead of you.

(No response.)

Q. You got on the boat again? A. Yes.

Q. You did not go down below, but went to the first-class passenger's room? A. Yes.

Q. You went into a stateroom? A. Yes.

(Testimony of Eunice C. Alapa.)

Q. After you had been there did he leave you there at all? A. No.

Q. Did he talk to anyone before you?

A. He talked to some Chinese.

Q. Somebody going to the stateroom?

A. Yes.

Q. He followed,—a little ahead of you on the deck? A. A little ahead of me on the deck:

Q. You followed a short distance behind him?

A. Yes.

Q. You did not walk together? A. Yes.

Q. Close enough so that you could follow him?

A. Yes.

Q. You were just ahead of him, on the first trip?

A. Yes.

Q. You sat down, threw off the fan, and somebody came with this vest of opium?

A. Yes. [135—55]

Q. Do you know whether it was one of the persons you had seen when you were there before, the first time? A. I don't know that.

Q. Would you recognize the man again who brought the opium the second time?

A. I didn't see the man.

Q. You didn't see the man?

A. No, I didn't see him.

Q. Something the same sort of thing that happened the first time, someone came in, you don't know who he was and what he looked like?

A. Yes.

(Testimony of Eunice C. Alapa.)

Q. Did he stay while you put on the vest?

A. There was a Chinese in the room on the second time I put on the opium, but I didn't pay any attention to him.

Q. Was he the one who brought the opium?

A. I don't know.

Q. Surely you know whether there was one Chinaman in there besides the man you went there with, whom you say was Lee Choy?

A. From the first stateroom we went to a second. There was no Chinese in the stateroom when we entered the room, after we had entered the room and were sitting down there was a Chinese came, and there was another Chinese came. I don't know which one brought the opium.

Q. So there were two Chinese besides Lee Choy in there while you put on this vest?

A. One Chinese in the room while I put on the vest. There is two that had been to the room.
[136—56]

Q. Do you think you could recognize either of those two?

A. Possibly I could, but I am not positive.

Q. The same sort of thing,—the thing was adjusted in the same way the second time, as it was upon the first occasion? A. Yes.

Q. You took down your dress and put it on and tied your dress and put on your cape and went off?

A. Yes.

Q. Then in leaving did you go ahead or Lee Choy go ahead?

(Testimony of Eunice C. Alapa.)

A. I went ahead as I had before.

Q. Do you know whether anyone saw you go in the stateroom?

A. I don't know. I did not see anyone.

Q. Could you go to that stateroom again if taken to the "President Wilson"?

A. I don't think I could because I didn't look at the number of it.

Q. You know what deck it was on, in respect to the deck you went on that boat from the wharf?

A. I don't remember what deck it was on either.

Q. Don't you remember if you went upstairs or downstairs?

A. We went upstairs. I don't remember if we went up one stairs or two.

Q. Then you came down, and where did you see Lee Choy,—he waited behind?

A. Lee Choy waited on the steamer. I went ahead of him. [137—57]

Q. As you had done before? A. Yes.

Q. You don't know whether he followed along behind or anything of that sort?

A. I didn't see Lee Choy any more after I left that second time, because I was arrested and taken away before he came up.

Q. Then you went down the gang-plank and the same custom's man was there? A. Yes.

Q. Where were you when you were arrested?

A. I was on the street in front of pier 7.

Q. You were on the street in front of pier 7. You had gotten clear off the pier?

(Testimony of Eunice C. Alapa.)

A. Yes. I had walked to the sidewalk and stopped there.

Q. At the time had you gotten to your car, to the automobile yet?

A. I hadn't got to the machine yet.

Q. Mr. McDuffie and Stevenson and all these gentlemen whom you have identified here came up and stopped you? A. Yes.

Q. And asked you whether you had liquor or not?

A. Asked me if I had liquor on my person and I said, "No." They asked me if I had anything else. I didn't answer.

Q. Did they search you, feel your person?

A. They did not.

Q. You hadn't told them at that time that you had anything else, except that you hadn't liquor?

A. I didn't tell them.

Q. And they made no effort to search you until you got to [138—58] the station?

A. They had no right to search me.

Q. They did not search you until you got to the station? A. They didn't do it.

Q. The man who was sitting in the car with you was Stevenson, and felt the opium you say, and said you were loaded with it? A. Yes.

(Recess taken from 10:30 to 10:45 A. M.)

Q. Mrs. Alapa, when you got off the boat the second time and were arrested you had arranged with a man, whom you say was Lee Choy, to follow you and get in the same car again as you had done before, is that right? A. To do what?

(Testimony of Eunice C. Alapa.)

Q. It was arranged between you he was to follow just as you had before? A. Yes.

Q. Did you tell the officers he was going to join you in a moment?

A. I told them that somebody was.

Q. Did you tell them that somebody was implicated in this transaction with you?

A. Yes, I did.

Q. So that they knew if they waited for a few minutes they would have the man?

A. They knew they would find him.

Q. Did they wait?

A. They did not wait. [139—59]

Q. Now how much had you told before you went over to the police station? Had you told him you were working for somebody else?

A. No, I had not. I told them that I was waiting for a party?

Q. And that this party was working with you or what?

A. I did not tell them he was working with me.

Q. Did you describe the party you were waiting for? A. I did not.

Q. Didn't tell them what he looked like, whether a Chinaman or a white man or what he was? A. No.

Q. Did you admit any guilt at all before you left for the police station? A. Before I left?

Q. Left for the police station?

A. No. They asked me if I had anything else

(Testimony of Eunice C. Alapa.)

on me after I told them I did not have liquor. I simply didn't answer them.

Q. They arrested you before you reached the automobile? A. Yes, they arrested me, I think.

Q. Did you say "over here is my automobile"?

A. No.

Q. Did they ask you whether you had an automobile or not?

A. No, they had seen me in the car, I guess. They said they wanted to arrest the chauffeur too.

Q. You didn't point out the chauffeur?

A. No, I didn't point out the chauffeur.

Q. They went right over and arrested this particular [140—60] chauffeur.

A. They went over with me. We got in the chauffeur's car.

Q. Were there any other cars around there?

A. Yes, there were others around there.

Q. They simply went right over and got into this particular car, and taking you with them?

A. Yes.

Q. And you told them you were waiting for somebody, and they simply went off to the police station?

A. Yes.

Q. You got in the car with McDuffie sitting on one side of you at the back, is that right?

A. Mr. Stevenson was sitting at the right-hand side of me as we drove to the police station.

Q. Wasn't Mr. McDuffie sitting on one side of you?

A. He was in the machine, I think he was in the

(Testimony of Eunice C. Alapa.)

front of the car at that time. I believe Mr. Wells and Mr. Wrinkle was in the back seat with me.

Q. You were sitting in the middle?

A. Yes, I was in the middle as we drove to the police station.

Q. One of the other officers sat in front?

A. Yes.

Q. Did you talk to these officers about this matter at all on the way to the police station?

A. We were going to the police station, and before we left for the police station Mr. Stevenson touched me and [141—61] after he touched my side he said, "She is loaded."

Q. There was nothing said about what you were loaded with? A. No.

Q. Opium was not mentioned? A. No.

Q. Nothing said about opium at all until you got to the police station where the opium was found, is that right?

A. Nothing said that I remember of.

Q. Then you went directly to the police station?

A. Yes.

Q. You did not do anything,—stop on the way?

A. Went directly to the police station.

Q. When you got to the police station you were taken into the matron?

A. I was taken upstairs to the room,—I don't know whose room it was.

Q. A matron was called?

A. A matron was called.

Q. She took your dress off, took off—

(Testimony of Eunice C. Alapa.)

A. She told me to unfasten my dress and I unfastened this and helped untie the jacket and took it off.

Q. Was anyone else present?

A. The officers were just outside the door.

Q. Anyone inside with you?

A. Just the matron and I, I think.

Q. Now then when this opium was found I suppose the officers came back in, didn't they? [142—62]

A. Yes, some of them came in.

Q. She handed it over to them? A. Yes.

Q. Do you know who she handed it to?

A. I don't remember.

Q. Then you had a talk with somebody I suppose, didn't you?

A. Then they asked me to take them where I had taken the other opium to.

Q. How did they know there was any other opium?

A. They saw me the first time I came off the steamer.

Q. They told you then they had seen you when you came off before?

A. Yes, some time during the conversation.

Q. What conversation? Did you have a conversation with somebody before you were searched at the police station? A. Not that I remember of.

Q. When was it that they had seen you come off before?

A. They asked me to take them to the place that I had taken the opium.

(Testimony of Eunice C. Alapa.)

Q. How did they know?

A. Maybe they were suspicious. They said they had seen me; they had seen me the first time I came off the steamer, they said.

Q. Who said that? A. The officers.

Q. What officers?

A. Wells and Stevenson. [143—63]

Q. Weren't you talking with some one officer in particular? A. All talking to me at once.

Q. They asked you to take them where you had gone before?

A. Told me to tell them where I had taken the opium.

Q. Now then did you tell them; did you admit then you had taken it off before? A. Yes, I did.

Q. You admitted that you had taken opium before? A. Yes.

Q. You were ready to take them?

A. I told them I would try to identify the house if the driver could stop at the place he stopped before.

Q. Before they asked you to do that, had anybody said anything as to what would be,—what would be done with you if you did this thing or the other thing? A. Nothing said.

Q. Nothing said about making a clean breast of it, show us where the opium was?

A. Nobody asked me anything about it.

Q. You told them what you have on your own volition? A. It was all my own free will.

Q. You are very sure of that? A. I am.

(Testimony of Eunice C. Alapa.)

Q. You are sure when you started off to show them where the opium was you did so simply because you wanted to expose this plot, not because you expected any favors or anything of that sort?

A. I told them simply because I knew I had did wrong [144—64] and was willing to admit it.

Q. You admitted it as soon as they saw the opium. They saw the opium and told you they had seen you before. And where was the driver all this time, do you know? A. The driver of the machine.

Q. Kamahara?

A. When I went upstairs to take the opium off I don't know where the driver was; I did not see him.

Q. You went down and told the driver,—they told the driver to go where he had gone before?

A. They told the driver to drive the car to the point where he drove before, then he drove and stopped and they asked me to identify the house and I did.

Q. Now you don't know,—of course you did not hear any of the conversation that took place between them and the driver, did you?

A. Why they made him take them to the place where he stopped before.

Q. You don't know,—you didn't hear him admit that he had been transporting opium before, he knew where the place was, or he had gone there before or any place whatever, because he also knew he had done wrong?

A. No, I didn't hear him.

(Testimony of Eunice C. Alapa.)

Q. You went over to his place? A. Yes.

Q. Who went with you?

A. Mr. McDuffie, Mr. Stevenson, Mr. Wells and Mr. Wrinkle.

Q. The same crowd that came up from the boat with you?

A. The same crowd that was there when I was arrested. [145—65]

Q. When you got to this house the driver stopped and you said, "That is the house"?

A. The driver stopped and we had to walk in a little lane from the car; we walked in the lane and I identified the house to the officers.

Q. Did you go into the house?

A. I didn't go into the house with the officers. I stood on the porch. They met the Chinese lady and asked me if that was the woman who took the opium that Lee Choy brought before, and I said it was.

Q. The same woman was there?

A. The same woman.

Q. Did you see anybody else there at that time?

A. Yes, sir; the officers asked me to come inside, and several Chinese asleep; they woke each one of them up.

Q. You did go inside then?

A. Yes, after they had gone in.

Q. They woke up several Chinese?

A. Woke up several Chinese that were sleeping, and asked me if that was the Chinese that was with me smuggling opium, and I told them no.

(Testimony of Eunice C. Alapa.)

Q. Didn't you tell them, since you had conceived the idea of making right for what you done wrong, that this Chinaman had stayed back on the boat there? A. Afterwards I told them.

Q. Not at this time?

A. Some time after they pulled the opium off me I told them about him.

Q. You did not decide to tell about that until you got [146—66] to the police station?

A. I knew I was arrested and I would have to go to the police station.

Q. You knew perfectly well it would have been very easy to have gotten these Chinamen that were on the boat with you, if you wanted to?

A. I told them to wait, I had somebody else on there. They did not want to wait.

Q. You saw no one else that you knew in the house?

A. I saw no one in the house I could identify but the Chinese woman.

Q. You would know her if you saw her again?

A. I think I would.

Q. What did she say, if any thing, or do you know? A. She talked Chinese.

Q. You mean to the officers?

A. Yes. I don't know what she said to the officers. They told her they were going to search the house, and I guess she told them to search it. They searched it.

Q. They searched it while you were there?

(Testimony of Eunice C. Alapa.)

A. Yes.

Q. Then you went back to the police station?

A. We were driving back to the police station.

Q. You went back to the police station?

A. Yes.

Q. Now, was anything said to you about your having to remain under arrest or about your being released from custody if you would do anything or anything of that sort?

A. There was not. [147—67]

Q. You were not told that you would be set at liberty if you made these disclosures?

A. I was not.

Q. So far as you knew you were going to remain under arrest? A. Yes.

Q. It was quite a surprise to you when you were let out? A. Yes, it was.

Q. Now nobody said anything about,—I want you to be perfectly sure about this,—

A. Nobody said anything to me about it.

Q. Nobody said anything about it going easier with you or about anything of that kind, if you would show them these people?

A. Nothing was said to me.

Q. When on your way back to the police station you passed an automobile, as I understand you, in which you saw this man whom you say was Lee Choy— A. His car passed ours.

Q. You mean going in opposite directions?

A. We were going in the same direction. He was

(Testimony of Eunice C. Alapa.)

in a car. He was in a car that passed our car and as soon as I saw the machine I saw him.

Q. Where was he sitting?

A. Sitting in the back seat.

Q. You were also sitting in the back seat of your car, were you not? [148-68]

A. I believe Mr. Wells was one of the officers sitting with me.

Q. You were in the back seat? A. Yes.

Q. That is, this other car came up behind you and passed you? A. Yes.

Q. You were looking into the car as they passed and saw this man? A. Yes.

Q. You recognized him at once? A. Yes.

Q. There was another man sitting with him?

A. There was another man sitting in the front with the chauffeur.

Q. There was another man sitting in front with the chauffeur. Was he sitting alone or not?

A. I don't know if he was alone or not. I saw him. I don't remember seeing anybody sitting with him.

Q. You didn't know the car that he was driving in, did you? A. I did not know the car, no.

Q. You didn't know the chauffeur who was driving the car, did you? A. I did not.

Q. Where did he pass you?

A. I don't know the name of the street.

Q. It was on the way from this place where you had been [149-69] back to the police station?

(Testimony of Eunice C. Alapa.)

A. Yes, it was while coming from this house back to the police station.

Q. Was this man hanging over the side of the car or leaning out or something like that when he passed you?

A. He was sitting in the back seat.

Q. Were you looking around for Lee Choy at that time, did you expect to have him pass you?

A. No, I did not.

Q. You were quite surprised when you saw him? A. Quite surprised.

Q. You say somebody in that car called out to somebody in your car, is that right?

A. Why somebody in my car said something about, "Yee Yap" and when they said, "Yee Yap" that is when I saw Lee Choy.

Q. What did they say about Yee Yap?

A. They said, "There is Yee Yap in that machine."

Q. Was that one of the officers that was sitting by you?

A. I think it was officers that was sitting in the front seat that said that.

Q. What kind of looking man was it that was supposed to be "Yee Yap," a large Chinese,—tall or short?

A. Short, heavy-set man, kind of bald-headed.

Q. He was sitting in the front seat?

A. He was sitting in the front seat with the driver.

Q. A short heavy-set man, kind of bald-headed?

(Testimony of Eunice C. Alapa.)

A. Yes.

Q. When they called out this car stopped?
[150-70]

A. Somebody called out for the car to stop, and they stopped.

Q. Did you tell anybody that your accomplice was in that car before they called out. Did you say, "There is the man" or something like that?

A. I said, "There is the man."

Q. Before you had explained everything, how you went on the boat?

A. I had not explained all of that to them, no.

Q. You told them you smuggled this opium for a man? A. Yes.

Q. Had they asked you to describe the man?

A. I did.

Q. Tell them what his name was?

A. Lee. I didn't know his last name.

Q. They stopped the car and brought this man back?

A. They brought this man back and asked me if he was the right man.

Q. And you said it was? A. I said it was.

Q. When the car passed you were you driving,—haven't you any idea of where you were at all?

A. I have not any idea.

Q. How far from the police station, how long after—

A. It was close to the police station at that time. I don't know the names of those streets.

(Testimony of Eunice C. Alapa.)

Q. Was this car going very slowly when it passed you or going rapidly?

A. Oh, he was not going very fast. [151-71]

Q. It was going fast enough to pass your car?

A. Yes, it was going fast enough to pass our car.

Q. Had you made any effort to tell them,—had you told them up to that time that this man had remained on the boat?

A. I told him that he had remained on the boat. He was going to come out and get in the machine with me, but they did not wait.

Q. A man came over and you identified him, you said, "That is the man"? A. Yes.

Q. Had you ever seen this other man that was with him before?

A. This other Chinese in the machine with him?

Q. Yes.

A. I had never seen him before.

Q. They spoke of him as Yee Yap?

A. They spoke of him as Yee Yap, but it was not Yee Yap; it was a mistake.

Q. After that what did they do with the man whom you identified?

A. They put Lee Choy in the back seat with me, and Mr. McDuffie sat in the back seat and we went to the police station.

The COURT.—Mr. McDuffie sat between you and Lee Choy?

A. He sat on the left-hand side, Lee Choy next to Mr. McDuffie. I sat next to Lee Choy.

Q. Still nothing had been said about your being

(Testimony of Eunice C. Alapa.)

released or [152-72] about what would be done with you, or anything of that sort?

A. Nothing was said to me about it.

Q. Then you got to the police station? A. Yes.

Q. Were you locked up?

A. No, I was not locked up.

Q. What was done with you?

A. I asked him if I could get an attorney to get some bonds, and they told me that I had that privilege if I wanted to call an attorney, and I called Mr. Brown but I was unable to get him.

Q. You called him over the telephone?

A. I was unable to get him. Later on Mr. McDuffie found him and talked to him, and later this other gentleman that was in the car with Lee Choy talked with Mr. Brown. I never had any conversation with Mr. Brown that night.

Q. How do you know these other people had a conversation with him? A. I heard them.

Q. He came there then?

A. They had a conversation with him over the telephone.

Q. After they got him over the telephone,—and you had been trying to get him before, why didn't you talk to him over the telephone?

A. The telephone number they had been ringing was listed in his name, but he did not live there, he lived in the apartment next to that. [153-73]

Q. After you knew these other men had gotten him why didn't you talk to him?

(Testimony of Eunice C. Alapa.)

A. Why I didn't think it was necessary to talk to him.

Q. Why didn't you think it was necessary, and had thought it was necessary a little while before?

Mr. PATTERSON.—Objected to as counsel is arguing with the witness.

(Argument.)

The COURT.—Objection overruled.

A. This Chinese in talking to Brown on the telephone tried to get me released.

Q. What Chinese?

A. The Chinese that was in the car with Lee Choy.

Q. He talked to whom on the telephone?

A. He talked to Brown on the telephone.

The COURT.—And Lee Choy and yourself were there? A. Lee Choy had been locked up.

Q. You said on your direct examination that somebody directed your release, Mr. Carden or somebody, you don't know who it was. What do you mean by that? How do you know somebody directed your release?

A. Mr. McDuffie talked to Mr. Brown and told him there was a woman who had been arrested, and wanted to find out about giving some bond, and this Chinese took the receiver and talked to Brown. Mr. Brown said he could not release me, he would phone to Mr. Carden, and find out if I could be released.

Q. You are perfectly sure that before you were released nothing had been said to you by way of

(Testimony of Eunice C. Alapa.)

indicating that [154-74] you were going to be released for having done what you did?

A. There was nothing said to me.

Q. Now since you have been released you have pleaded guilty, have you not? A. I have.

Q. Now before you pleaded guilty was anything said to you by any of the officials by way of suggesting that you would receive a lighter sentence or that you would receive immunity, or that it would go less hard with you if you did plead guilty and if you testified against Lee Choy?

A. There was nothing said to me about that.

Q. Nothing ever has been said to that effect?

A. Absolutely nothing.

Q. No officer connected with the government has said that? A. No, sir.

Q. You are here testifying against Lee Choy. You have pleaded guilty solely because you think it is the right thing to do? A. I have.

Q. You expect no immunity?

A. I don't know what the consequences of the thing will be.

Q. You furnished no bond, did you?

A. I did not.

Q. You are absolutely free, without bond, is that not true? A. I never put up any bond. [155-75]

Q. Now Mrs. Alapa, you know of course that you have not been sentenced, don't you?

A. I don't know.

Q. You know that you haven't been sentenced to jail or anything of that sort?

(Testimony of Eunice C. Alapa.)

A. No, my sentence was supposed to be the 18th of November.

Mr. PATTERSON.—It has not arrived yet.

Q. However that may be, you have not been sentenced. Mrs. Alapa, you say that you know and have known for some months this Japanese chauffeur, Kamahara,—what is his name,—Kamahara?

A. Yes.

Q. What sort of trips has he been taking you on, what sort of work has he been doing for you during those months?

A. About 8 months ago I had occasion to call a car to go out riding with my grandmother or go and do some shopping and I called this stand and I don't know who answered my call but they gave me his car, and since then I have used him several times.

Q. What is your source of income, Mrs. Alapa?

A. I have not been employed since I have been in the Hawaiian Islands. I had money when I came here. I have been working with a theatrical troupe about 15 years.

Q. You haven't done anything since you came here?

A. I have not been employed since I came here.

Q. Mrs. Alapa, I am going to ask you if it is not a fact that you have been practicing prostitution in the [156-76] Territory of Hawaii since you have been here? A. No.

Q. You have not had sexual intercourse with men for money?

(Testimony of Eunice C. Alapa.)

Mr. PATTERSON.—That is objected to on the grounds the question has already been asked and answered.

(Argument.)

The COURT.—I will permit the question.

Q. I will ask you this question, isn't it a fact that this Japanese driver, Kamahara, has been acting for you in the course of the practice of prostitution by you, by the way of bringing customers to you?

A. That is not true.

Mr. PATTERSON.—We object to that, may it please the Court, on the ground that it presumes this witness is a prostitute.

The COURT.—I think your question is proper. Objection overruled. She has answered the question. She has said it is not true.

Q. How much money did you have when you came down here?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

(Argument.)

The COURT.—How would that tend to establish the guilt of the defendant?

Mr. ULRICH.—It goes to the credibility of the witness; it is not offered for the purpose of establishing the guilt or innocence of the defendant.
[157-77]

The COURT.—If confined to that phase solely I will permit the question. It goes to the credibility of the witness, which is involved in this. I will permit the question. A. I had about \$1,500.

(Testimony of Eunice C. Alapa.)

Q. And you have lived on that \$1,500 for a little over a year? A. I have.

Q. And have received no other moneys?

A. I have not.

Q. How long have you been living where you live now? A. Four months.

Q. Before that where did you live?

A. I lived up Fort Street.

Q. Whereabouts on Fort Street?

A. Funchal Lane and Fort Street.

Q. Have you always gone under the name of Mrs. Alapa? A. I have.

Q. Since your husband's death have you lived with any other man? A. I have not.

Q. You have not lived with any Chinese?

A. I have not.

Q. Who is your landlord? A. Tong How.

Q. And you pay the rent? A. Yes.

(Redirect follows.) [158-78]

Redirect Examination.

(By Mr. PATTERSON.)

Q. Mrs. Alapa, what nationality was your husband? A. Hawaiian.

Q. What was his business?

A. He was a musician.

Q. Where did you marry him?

A. El Paso, Texas.

Q. Was he in a show troupe at that time?

A. Manager of a theatrical troupe at that time.

Q. Where did he die? A. Salt Lake City.

Q. Why did you come to the Hawaiian Islands?

(Testimony of Eunice C. Alapa.)

A. Before he died he asked me to visit his grandmother.

Q. Did you ever see his grandmother before you came here?

A. I had never seen his grandmother, but I had seen his mother.

Q. Where did you see her?

A. I met her in San Francisco while she was on her way to the Hawaiian Islands from Salt Lake City.

Q. Do you know whether or not the grandmother has been in the States?

A. Yes, the grandmother has lived in Utah.

Q. For how long? A. I don't know.

Mr. ULRICH.—Objected to.

Mr. PATTERSON.—We have a reason for showing why she is down here. They have gone into that.

The COURT.—As suggested by Mr. Patterson, why is she down here? I think that is redirect examination, based on [159—79] cross-examination.

Q. Have you been living with your grandmother ever since you have been here?

A. I have been living with my grandmother over eight months.

Q. She has been there with you all the time?

A. Yes.

The COURT.—She has lived with you or you with her? A. She has lived with me.

Q. How old is the old lady?

(Testimony of Eunice C. Alapa.)

A. They say she is 91 years.

Q. That is the general reputation she has of being 91 years of age? A. Around 91 years, yes.

Q. Did you see this Chinaman whom you referred to as Yee Yap this morning?

A. I saw him come in the courtroom.

Q. You saw him in here this morning. Was that the man that is supposed to be in the car with Lee Choy that night?

A. He was the man that was in the car.

Q. Could you identify him if he was brought into court at this time? A. Yes.

(Man referred to could not be located.)

Q. Did you know any of these Chinamen down on this boat that night? A. Never saw one before.

Q. Never saw any of them except Lee Choy?

A. No. [160—80]

Q. Has anyone ever promised you you would get off light in your case if you testified in this case, Mrs. Alapa? A. No.

Q. There has never been any promise made you by anyone? A. No.

Q. Your idea was to tell the truth in here?

A. Yes.

Q. You were caught with the goods and would tell the truth? A. Yes.

Q. Nobody promised you would get off for that?

A. No.

Q. You are required to report at the office of the United States Attorney every day? A. Yes.

Q. Do you report that way? A. Yes.

(Testimony of Eunice C. Alapa.)

Q. So you report every day except Sunday?

A. No, not on Sunday.

Q. Did you ever see anyone connected with the United States Attorney's office before you were released in the custody of Mr. Brown, your attorney? A. What is the question?

Q. Did you see Mr. Carden, Mr. Steiner or myself? A. Before these officers?

Q. Before you were released in the custody of Mr. Brown on the morning of the 19th?

The COURT.—There has been nothing said about being [161—81] being released in the custody of Mr. Brown.

WITNESS.—I do not know who I was released in the custody of.

Q. You were released after Mr. Carden,—after Mr. Brown got in touch with Mr. Carden, you testified to? A. Yes.

Mr. ULRICH.—I object to the suggestion that she was released in the custody of Mr. Brown.

The COURT.—She is at liberty, that is obvious.

Mr. PATTERSON.—I wish to show you, as Mr. Ulrich and every attorney knows, by courtesy extended the woman was—

The COURT.—The only thing necessary, she has been released and she is now at liberty.

Q. Did you see me before you were released that night? A. No.

Q. Did you see Mr. Carden? A. I did not.

Q. Did you see Mr. Steiner? A. I did not.

(Testimony of Eunice C. Alapa.)

Q. Could you identify the matron at the police station? A. Yes.

Mr. ULRICH.—I don't object to identifying the matron at the police station. If you bring in a person and say who is this, there is some chance of the witness saying it was the wrong person, but not by saying, "Bring in the matron of the police station. Is this the matron of the police station?"

The COURT.—Of course the proper way technically and [162—82] properly would have been to have brought the party in and ask her if she knows the party.

Q. Who is this woman, Mrs. Alapa, do you know her?

(Referring to woman brought into courtroom.)

A. She is the matron at the police station, she is the woman that took the opium from me.

Recross-examination.

(By Mr. ULRICH.)

Q. You don't know whether the same courtesy you were released by was extended to others—

Mr. PATTERSON.—Objected to.

(Witness excused.)

Testimony of Mrs. Marie J. Aylett, for the Government.

Mrs. MARIE J. AYLETT, called and sworn as a witness for the prosecution, testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. What is your name?

(Testimony of Mrs. Marie J. Aylett.)

A. Mrs. Marie J. Aylett.

Q. What is your business, Mrs. Aylett?

A. I am police matron at the police station.

Q. Here in Honolulu? A. Yes.

Q. Do you know this lady who sits back here with the brown hat on? A. Yes.

Q. Where did you see her before?

A. The first I saw her was at McDuffie's office, upstairs [163—83] at his office.

Q. McDuffie's office upstairs? A. Yes.

Q. Were you on duty that night? A. I was.

Q. Did you have any dealing with her that night?

A. Yes.

Q. What did you do?

A. I took her clothes off, as far as the last dress she had on. It was a vest with pockets.

Q. I am going to show you a piece of clothing here which contains 18 cans and ask you if you recognize that? A. I do.

Q. Examine it? A. That is the very one.

Q. Are you sure of that? A. Yes.

Q. Do you know whether or not there were any tin cans of this kind in the vest that night?

A. Yes.

Q. You are positive of that? A. I am.

Q. You are positive that is the same vest?

A. I am. That is the same vest.

Q. You took it off the woman that is here?

A. Yes.

Q. How did she have it on?

A. Just like this, right close to her body.

(Testimony of Mrs. Marie J. Aylett.)

Q. What did you do with the vest? [164—84]

A. I took it away from her and placed it at the door, which I had partly closed, that the men folks would not see her body, right back of the door. You open the door at the corner.

Q. Do you know who got it after you took it out of the room?

A. And when I had her dressed I called Mr. McDuffie to come in, and I pointed to him, "There is the stuff" and he picked it up and that is the last I seen.

Q. Anybody else there besides McDuffie?

A. Two other gentlemen.

Q. Do you know them? A. I do not.

Cross-examination.

(By Mr. ULRICH.)

Q. You say that you took a vest, which you believe is this vest, off of this lady on that night?

A. Yes.

Q. Did I understand you to say it was right next to her body?

A. Yes, right close to her body. She did—

Q. She did not have it on top of any other clothing whatever?

A. She had an undershirt inside, an under-waist outside of this vest, and a coat outside.

Q. It was under her skirt, underskirt?

A. Yes.

Q. You had to completely undress her except her undershirt to get it off, is that right? A. Yes.

[165—85]

(Testimony of Mrs. Marie J. Aylett.)

Q. Now you say that this is the vest. Do you mean that you really are sure that this particular vest is the vest, and the same one, or that it was a vest something like this?

A. Exactly. That is the exact thing.

Q. What is the particular thing about this vest that makes you know that it is exactly this vest. These marks,—do you remember these marks?

A. I never looked exactly at the marks. That is the first kind I ever handled; because of the kind of clothes. I never seen any of them had the same arrangement.

Q. Of course.

A. But as to marks or anything like that, I don't remember any of the marks.

Q. You do not remember any of these marks?

A. No.

Q. Your reason is because you never saw any other vest like it therefore you assume this is the one?

A. I know that is the one I took off. It had strings. It was all tied in front here, tied it down.

Q. But you took no particular care to notice anything about this vest which would make you know it if you would be subsequently be shown to know it was this same vest and not some other vest of the same kind?

A. I never handled no other but that one, of that kind.

Q. But you have nothing by way of marks on this vest? A. I never noticed any marks.

(Testimony of Mrs. Marie J. Aylett.)

Q. By way of which you could identify this?
[166—86] A. No.

Mr. ULRICH.—I think I will take the court's ruling on a motion to strike.

Mr. PATTERSON.—I am offering this in evidence again at this time, your Honor. (Referring to jacket and tins.)

Mr. ULRICH.—It seems the witness is simply assuming. She can point to nothing on the coat which would distinguish it from any other coat.

The COURT.—The identification can be made almost complete. The lady has herself said she took this off.

Mr. ULRICH.—The matron said she took it to the door and Mr. McDuffie took it away.

The COURT.—She testifies she is absolutely sure.

Mr. PATTERSON.—If the jury does not believe it, I will connect it up by Mr. McDuffie.

The COURT.—I think the evidence is sufficient to admit it. It will be admitted in evidence and marked Prosecution's Exhibit "C."

(Jacket and 18 tins received and marked Prosecution's Exhibit "C.")

Mr. ULRICH.—I object to the cans. They have not been identified.

The COURT.—I take it the strings are part of the vest, and the opium in the pockets are part of it also.

Mr. ULRICH.—How do we know it is the same opium. I object to the opium. I object to that on the ground it has not been sufficiently identified.

(Testimony of Mrs. Marie J. Aylett.)

The COURT.—The vest with the contents that holds the opium will be received. [167—87]

Q. Were you present at any conversation which took place between this lady and McDuffie or any of the officers? A. No.

Q. You had no conversation with her yourself about this matter? A. No.

Redirect Examination.

(By Mr. PATTERSON.)

Q. Did you take the lady's skirt off that night, the skirt? A. Yes.

Q. You took the whole dress off? A. Yes.

Q. Did she have an undershirt on. Did she have drawers on? A. She had drawers on.

Q. Were these cans over the drawers?

A. The whole thing was right around. (Indicating.)

Q. Was this vest placed on her the same as I put it on now? A. Yes.

Q. I put it over my shoulder just like I do a coat? A. Like a vest.

Q. Underneath her dress? A. Yes.

Q. Underneath her coat? A. Yes.

Q. The lady is very much smaller than I am.

A. (No answer.) (Witness excused.) [168—88]

Testimony of Arthur McDuffie, for the Government.

ARTHUR McDUFFIE, was called and sworn as a witness for the prosecution, and testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. Your name is Arthur McDuffie? A. Yes.

Q. You are chief of detectives of the city and county of Honolulu? A. No, sir, Captain.

Q. Captain of detectives. And do you know the defendant in this case?

A. I know him by sight.

Q. A man that sits over there by his counsel?

A. Yes.

Q. You identify him?

A. The last Chinese there.

Q. With his arms folded? A. Yes.

Q. Do you know this lady that sits back here?

A. I know her by sight.

Q. Did you see these people on the night of the 18th of October of this year?

A. And also on the 19th, morning of the 19th.

Q. And on the 18th and also the morning of the 19th? A. Yes.

Q. Where did you first see either one of them?

A. I saw the lady in question in front of pier 7.

Q. About what time of the night was that?

A. It was then just about 11 o'clock. [169—89]

Q. Was anyone with you?

A. Yes, Mr. Stevenson. I was talking to him. Mr. Wells was there and another narcotic man.

(Testimony of Arthur McDuffie.)

Q. And with reference to this woman what happened that night?

A. She was stopped by Stevenson. This narcotic man by the name of Wrinkles he called Mr. Stevenson's attention, he says, "There she goes now" and Mr. Stevenson walked up to the lady and had some conversation, the first part of it I did not hear, and he later asked me if we had a matron up to the city prison.

Mr. ULRICH.—Before the witness progresses any further I am going to ask that no conversation be given as long as they were not in the presence of the defendant.

Q. Just tell what happened.

A. From the pier there we went up to the police station and up into my office.

Q. Who went up?

A. Stevenson, Wrinkles, Wells and myself.

The COURT.—And the lady?

A. And the lady.

Q. What did you do up there?

A. The matron was called and asked to search this woman in my office.

Q. And was such a search made?

A. The search was made, yes.

Q. Was there anything discovered?

A. They were. There was a vest made with pockets in it.

Q. Anything in the pockets?

A. They were twenty tins. [170—90]

Q. Showing you the United States Exhibit "C"

(Testimony of Arthur McDuffie.)

in this case, I will ask you whether or not after an examination of the same you can identify it?

A. (Witness examines Exhibit "C.") That is the vest that was taken from her in my office.

Q. That was taken from her in your office?

A. Yes, sir.

Q. And what did—do you know what happened to it, what was done to it?

A. Mr. Stevenson said to Wells that he better take it and put it in the vault here, a vault at the Federal Building.

Q. Wells took it? Is that right? A. Yes.

Q. Do you know how many cans of opium there were? A. There were 20.

Q. Every pocket was full? A. Yes.

Q. From the police station did you go anywhere else with this woman?

A. Yes, we went up to a house, what they call the new Palama park district.

Q. What did you do there?

A. We made a search of a room.

Q. Of a room or her room? A. A room.

Q. Was this woman with you? A. She was.

Q. Where did you go from there?

A. Went back to pier 7. [171—91]

Q. Anything happen on the way down to pier 7?

A. Not on the way down.

Q. Nothing at all? A. No.

Q. What happened down there, if anything?

A. The woman, Stevenson, myself, Wrinckles and Wells were standing in front of pier 7. They were

(Testimony of Arthur McDuffie.)

two of them left and went aboard the boat and returned about 15 minutes after. We then left pier 7 again and went along the waterfront to Fort Street, up Fort Street, and just a little past Queen, between Queen and Merchant Street, and there was a machine passed. I believe they made the turn, went on past us. He made the turn at Queen Street and we had just made the turn on Merchant Street, towards the police station, in front of McInerney's store; they were somebody in that machine yelled out. We stopped and that machine pulled on ahead of us, I judge about 30 or 40 feet, and there was a Chinaman got out and came over to the machine. In the meantime Mr. Stevenson had jumped over the machine that we were in and had gone up to the machine that had stopped, and Stevenson then brought him over to our machine and was asked, the woman was asked, whether or not that this was the Chinaman she had reference to and she said, "yes, that is him."

Q. Was that this defendant?

A. That is the defendant.

Q. Had she described this Chinaman before?

A. Yes, she had described him, with a number of—

Mr. ULRICH.—I object to anything she had said before the [172—92] Chinaman was brought before him.

The COURT.—You can testify that she described a Chinaman and as a result of that description Mr. Stevenson brought this man over. I am inclined to

(Testimony of Arthur McDuffie.)

think the objection is well taken as to what she said, the description she gave of the Chinaman.

Mr. ULRICH.—I object, if the Court please, to getting all this before the jury.

The COURT.—Mr. McDuffie said she had described the Chinaman, and further states Mr. Stevenson went over to the car and brought this identical defendant to the car in which they were seated.

Mr. PATTERSON.—The defendant brought this Chinaman back to the car? A. Yes.

Q. What happened then?

A. After he were identified he were told to get into the machine. I were sitting on the right-hand side, sitting right on top of the door, and she, the lady, was sitting on the left-hand corner of the back seat. This Chinaman got in and sat about the middle of the seat first, fully 18 inches between the two of them, and when the machine started he moved over towards this woman, he nudged her with his elbow and told her, "No talk, no talk."

Q. You heard that yourself?

A. I heard that myself.

Q. Then where did you go?

A. Went to the police station.

Q. Was there anyone else with Lee Choy that night? [173—93]

A. Yes, there was the driver of the machine and there was a Chinese by the name of Ching Tai and the defendant himself.

Q. Who is Ching Tai?

A. He is a Chinese who does considerable bond-

(Testimony of Arthur McDuffie.)

ing of Chinese that are arrested, classified as a professional bondsman.

Q. He is a professional bondsman? A. Yes.

Q. Then they were all taken down to the police station and booked?

A. Yes, this defendant was booked. I think that the lady was booked also. Those are the two that were booked.

Q. Did there anything else happen that night?

A. The driver of the machine, who was a Japanese, was asked whether this defendant—

The COURT.—The defendant was there?

A. The defendant was present. This Japanese was at the desk and he was asked whether or not this was the man and he identified him as being the man that he had been down to the boat on the previous trip, or one trip before this time they were caught.

Q. He identified him at the police station?

A. Yes.

Q. After this opium, after this alleged opium or vest was removed from this woman did you find this in the room where the search was made by Mrs Allyet, after the search?

A. We were called by the matron to come into the room, and the matron pointed towards where that package was laying [174—94] on the floor.

Cross-examination.

(By Mr. ULRICH.)

Q. This vest is the vest you picked up on the floor there, Mr. McDuffie? A. Yes.

(Testimony of Arthur McDuffie.)

Q. Did you put these marks on there?

A. No. My initials are on there.

The COURT.—Ask Mr. McDuffie to point them out.

(Witness indicates marks on vest.)

Q. You put those on there that night?

A. Yes, sir.

Q. Mr. McDuffie how long a time elapsed between the time that you picked this woman up at the wharf the first time and the time that you put the defendant under arrest, as you say?

A. As I stated before, it was about 11 o'clock that this woman was apprehended and it was about a quarter to one, I believe, when this defendant was apprehended.

Q. Now, then this woman had been with you, aside from the time she was in there with the matron, all of the time during that period of an hour or two between 11 and a quarter to one? A. Yes.

Q. This other machine passed you on Fort Street?

A. We were coming up, it was going down.

Q. You came from different directions?

A. Yes.

Q. Coming from the other direction, who was it that [175—95] first called out or said anything?

A. There was somebody in that machine. I don't know who it was. I figured it was this Ching Tai.

Q. Called out first? A. Yes.

Q. Did Mrs. Alapa, this lady, say anything? Then did you call and the other machine stop?

(Testimony of Arthur McDuffie.)

A. No, we had turned the corner; on account of somebody yelling out the machine was stopped, near McInerney's.

Q. They were the ones that called. They stopped by reason of the other calling? A. Yes.

Q. You did not call out for them to stop?

A. No.

Q. When you went back to the police station the final time, the defendant you say was sitting in the back seat with Mrs Alapa and you were sort of sitting on the door? A. I was sitting on the door.

Q. The two of them right by your side in the back seat? A. Yes.

Q. As soon as he got in the car he sat down by the woman and then nudged over toward her and nudged her once or more than once and said, "No talk, no talk," which you could quite distinctly hear? A. I did, I heard that.

Q. And you were right hovering right over them there?

A. No, I was not, I was in the opposite side of the machine from him, fully three and a half feet from where I [176—96] was sitting to where they were.

Q. Fully three feet to where they were sitting, that is to where the nearest one of them were sitting, you mean?

A. That is the Chinaman sitting next to me.

Q. He didn't shove over to her then?

A. As I stated, there was about 18 inches between the two of them.

Q. He was sitting over nearer to you first?

(Testimony of Arthur McDuffie.)

A. Yes, he was sitting nearer to me and then edged over towards her.

Q. When he got alongside of her you saw him nudge her? A. Yes, I did, with his elbow.

Q. With his elbow far away from you?

A. Yes.

Q. You heard him say, "No talk, no talk"?

A. Yes.

Q. And there was whatever distance there would be, no one would expect you to remember the number of feet or the number of inches,—whatever the distance of it would be between the people sitting in that car, the two persons sitting as near as they could get on the back seat, and you? A. Yes.

Q. What kind of a car was it?

A. I don't know.

Q. A touring car? A. Touring car, yes.

Q. Seven-passenger car?

A. That I don't know.

Q. Room for three people to sit comfortably?
[177—97]

A. There would have been, there were seats back, folded down in the floor.

Q. In the back seat there was room for three people to sit? A. Yes, in the back seat.

(Witness excused.)

Testimony of W. K. Richardson, for the Government.

W. K. RICHARDSON was called and sworn as a witness for the prosecution, and testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. Mr. Richardson, what is your full name?

A. W. K. Richardson.

Q. What is your business? A. Custom guard.

Q. Custom's which? A. Custom guard.

Q. And do you remember the last time the steamship "President Wilson" was in here?

A. Yes, sir.

Q. What date was that? A. 18th of October.

Q. What were you doing that day?

A. I was on guard at the gangway.

Q. At this particular steamship? A. Yes, sir.

Q. What was your duty there?

A. To, well, prevent smuggling. [178—98]

Q. To prevent smuggling? A. Yes, sir.

Q. Do you know Lee Choy? A. Yes, sir.

Q. Where is Lee Choy, do you see him?

A. Yes, sir.

Q. Where is he? Point him out.

A. The second man over there, the middle man there. (Indicating defendant.)

Q. Next to Mr. Ulrich? A. Yes, sir.

Q. How long have you known him?

A. Well, I don't know, not very long.

Q. Did you see him on the night of the 18th?

(Testimony of W. K. Richardson.)

A. Yes, sir.

Q. Where did you see him?

A. Down at the dock.

Q. How many times did you see him that night?

A. Several times.

Q. And do you know whether or not he went on the boat?

A. Yes, sir, he went on the boat.

Q. How did he get on the boat?

A. He has a pass and I just let him go through the gangway.

Q. He has a pass which entitles him to go on the boat? A. Yes.

Q. Did he show you the pass? A. Yes, sir.

Q. Do you know what business he has on the boat? A. Yes, sir. [179—99]

Q. What was his business?

A. He is connected with Ah Chew Brothers.

Q. Ostensibly working for Ah Chew Brothers' store here in town? A. Yes.

Q. That is how he happened to pass? A. Yes.

Q. Do you know this lady back here with the hat on? A. Yes, sir.

Q. Did you ever see her before?

A. Saw her that night.

Q. You remember her. Where did you see her that night? A. She came up the gangway.

The COURT.—Did she have a pass?

A. No, she had no pass.

Q. Why did you let her go up the gangway?

(Testimony of W. K. Richardson.)

A. I stopped her at the gangway and when I asked her for her pass she said she was a passenger.

Q. And then you are supposed to let her go up, is that correct? A. Yes, sir.

Q. How many times did you see Mrs. Alapa that night? A. Twice.

Q. And can you remember whether or not they went up the gang-plank somewhat near the same time?

Mr. ULRICH.—Objected to as purely leading and suggestive.

Mr. PATTERSON.—I will withdraw the question. [180—100]

Cross-examination.

(By Mr. ULRICH.)

Q. Have you any idea as to what time you saw Lee Choy on the boat?

The COURT.—Speaking of the first time?

Mr. ULRICH.—Yes.

Q. Do you remember what time of the night it was you saw him down there?

A. Yes, when the boat was docked, that was about half-past 6 or 7; then he went aboard.

Q. And went on and off two or three times?

A. Yes.

Redirect Examination.

(By Mr. PATTERSON.)

Q. Mr. Richardson, about what time was the last time you saw him down at the boat, that you remember?

A. Well, that is kind of hard because he was just

(Testimony of W. K. Richardson.)

going up and down; about half-past 8 or 9 o'clock.

Q. What is that?

A. About half-past 8 or 9 o'clock.

Q. Are you sure that is the last time you saw him?

A. I am not very positive on that time.

Q. It might have been an hour or two later?

A. Might have been.

Q. You are not positive as to what time?

A. I am not positive.

Q. Can you state whether or not he made any trip up on the boat about the same time the woman did?

Mr. ULRICH.—Objected to as suggesting to the witness what he wants. [181—101]

The COURT.—There was nothing about that in the cross-examination, nothing about the woman.

Mr. PATTERSON.—Question withdrawn. I have no further questions.

Recross-examination.

(By Mr. ULRICH.)

Q. When you say about half-past 8 or 9 o'clock as being the last time you saw him, that is the best of your recollection? A. Yes.

(Witness excused.) [182—102]

U. S. vs. Lee Choy.

11/8/22.

Testimony of W. K. Wells, for the Government.

Mr. W. K. WELLS, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. What is your name? A. W. K. Wells.

Q. Did you ever see this package before, Mr. Wells? (Indicating jacket.) A. Yes, sir.

Q. What is your business, Mr. Wells?

A. Narcotic agent.

Q. Showing you the package, can you identify it?

A. Yes. It has my initials on it.

Q. How about the opium, these cans of opium, the cans that are contained in here?

A. I put my initials on them.

Q. On every one of them? A. Yes, sir.

Q. Examine each one of them please, Mr. Wells. (Witness examines tins contained in jacket.)

Q. Have you examined them? A. Yes, sir.

Q. You are sure that is the same opium, 20 tins of opium? A. Yes, sir.

Q. Where did you get those twenty tins of opium in the vest, Mr. Wells?

A. From Mr. McDuffie's office.

Q. You got it from Mr. McDuffie's office? [183—
103]

A. Yes, sir.

Q. Where did you pick it up?

(Testimony of W. K. Wells.)

A. Near the door, lying down near the door.

Q. Were you there when the matron searched this woman? A. Yes, sir.

Q. You picked it up after she got through searching? A. I think I did.

Q. And you have had it in your possession ever since then? A. Yes, sir.

Q. These two cans, tin cans here, what did you do with these cans?

A. Why Mr. Barrios took two cans out of the jacket on the 24th day of this month to examine, analyze.

Q. Did he return the cans to you?

A. Yes, sir, the following day.

Q. You are sure these were the cans?

A. Yes, sir.

Q. And this other can, did you notice this one in particular, did you notice this one too? (Indicating second tin.) A. Yes, sir.

Q. That is another one you gave Mr. Barrios?

A. Yes.

Q. Of the twenty tins you mention, that you obtained? A. Yes.

Q. It is the same 20 tins you got down to McDuffie's office and had them in your possession up to the time of your producing them here in court?

A. Yes. [184-104]

Q. Do you know Lee Choy? A. Yes.

Q. Is he this gentleman that sits next to Mr. Ulrich? A. Yes, sir.

Q. How long have you known him?

(Testimony of W. K. Wells.)

A. Oh, I think off and on for quite awhile.

Q. What do you mean by quite awhile?

A. I have seen him down to the boats.

Q. Do you know Mrs.—this lady back here?

A. Yes.

Q. What is her name? A. Mrs. Alapa.

Q. On the night of the 18th of October what were you doing, Mr. Wells?

A. Down to the “President Wilson,” pier 7.

Q. And did you see Lee Choy that night?

A. Yes, sir.

Q. How many times? A. I saw him twice.

Q. How many times did you see him down to the boat? A. Three times. I beg pardon.

Q. Where did you first see him?

A. I seen him going on board the steamer.

Q. About what time was that?

A. About ten o'clock, I think.

Q. Who was with you that night?

A. Mr. Wrinkle, and Mr. Stevenson.

Q. With reference to the time of the going on the steamer, [185-105] what place, particular place, did you see him first?

A. I saw him going toward the gangway.

Q. Did you notice him go on the steamer?

A. Yes.

Q. With reference to his movements did you make any note of the movements of Mrs. Alapa?

A. Well she came right afterwards.

Q. What did she do?

(Testimony of W. K. Wells.)

A. She was stopped by the custom officer, and then later she went on board the steamer.

Q. You were on duty that night, were you not?

A. Yes, sir.

Q. When did you next see her?

A. Mr. Stevenson and Wrinkle went on board and I came downstairs. I was coming up town and I got in my car and a fellow came up and talked to me. I had my headlights on. She passed in front of me and she looked kind of bulgy there; she got in the car next to me.

Q. Next to you?

A. Ewa of me. I asked the fellow who she was. He said he did not know, and later I saw Lee Choy get in the car with her.

Q. You are positive that was Lee Choy?

A. Yes, sir.

Q. You can remember seeing him that night?

A. That night going on board.

Q. And saw him get in the car with this woman?

A. Yes, sir. [186—106]

Q. And what happened when they got in the car?

A. They drove away.

Q. What did you do then, Mr. Wells?

A. I came uptown and I went back and I stayed in front of the stairway and I got off and went on, went upstairs, and I saw Wrinkle and Stevenson coming towards me, so I went with them and when we got in the car I told them about it, and I had no sooner got through talking to them when she passed by and went on board again. We waited

(Testimony of W. K. Wells.)

until she came out, came down,—before she came down Stevenson and Wrinkle got off and went and talked to Mr. McDuffie and pretty soon she came down and Wrinkle and Stevenson stopped her.

Q. When she came off the boat? A. Yes.

Q. Did you see her go on board the second time?

A. Yes.

Q. Did you see Lee Choy go on the second time?

A. No, sir.

Q. You didn't see him go on the second time?

A. No, sir.

Q. Had you been around the wharf all the time there? A. You mean that night?

Q. After the woman and Lee Choy drove off in the car did you remain there on the wharf all the time? A. No, I drove uptown.

Q. How long were you gone up town?

A. About 15 minutes, I think.

Q. About 5 minutes, something like that? [187—107]

A. Something like that.

Q. When you came back she was going on board?

A. I came in front of the stairway, left my car there, went upstairs, and Stevenson and Wrinkle were coming towards me.

Q. From the wharf? A. From the gangway.

Q. You saw her at that time? A. No, sir.

Q. When did you see her?

A. Afterwards. Then we got in my car and I told them about her.

Q. You got in your car? A. Yes, sir.

(Testimony of W. K. Wells.)

Q. What did you do then?

A. I told Stevenson and Wrinkle about her.

Q. What did you and Wrinkle and Stevenson do when you got in your car?

A. We stayed in the car, pretty soon she passed in front of me. I said, "That is the woman."

The COURT.—Which way?

A. Going up the stairway to the gang-plank.

Q. That is the second time you saw her that night? A. Yes, sir; the second trip.

Q. What did you fellows do then?

A. Wrinkle and Stevenson went off over to Mr. McDuffie on the sidewalk. I stayed in my car. Pretty soon she came downstairs and Wrinkle and Stevenson stopped her. I drove back in my car, went towards the Waikiki side of the [188—108] wharf, and Stevenson said, "Grab the Japanese, grab the Japanese, grab the car," so I went over and talked to the Japanese and brought them over towards where the three of them were standing.

Q. Do you know who that Japanese is?

A. I know him now.

Q. What is his name?

A. "Hara." They call him "Hara."

Q. You grabbed him and the car that night?

A. Yes, sir.

Q. What did you do after you got in the car?

A. And the three of them got in the car, Stevenson said, "We will drive to the police station." Before they started he said, "Well, she is loaded."

Q. You went up to the police station?

(Testimony of W. K. Wells.)

A. Then we went up to the police station.

Q. Then this searching episode took place up there that you have testified to already?

A. Yes, sir.

Q. After that what did you do?

A. From there we went up to the place, there is a lane between Kukui and Beretania, I don't know the name of it, with a house, a Chinese house, Mrs. Tom Leong's.

Q. From there where did you go?

A. From there went down to the wharf again.

Q. And from there where did you go?

A. From there we were going back to the police station and Wrinkle and I drove up Alakea, Bishop, and on Merchant Street, and I saw two cars standing in front of McInerney's [189—109] when we came up, to the car, I recognized Stevenson standing in front of the front car, and I walked up with Wrinkle and I saw a Chinese fellow sitting in the back seat, and I told Stevenson, "Well, that is the fellow."

Q. What did you mean by "that is the fellow"?

A. That is the fellow that got in the car.

Q. What fellow?

A. This fellow that got into the car with Mrs. Alapa.

Q. Who was that fellow?

A. Lee Choy. Then I asked him if he worked for Ah Chew Brothers, and he said yes.

Q. You asked him, the defendant, if he worked

(Testimony of W. K. Wells.)

for Ah Chew Brothers, and the defendant said yes. That is the defendant that sits by Mr. Ulrich?

A. Yes.

(Thereupon an adjournment was taken until 9 o'clock A. M., Thursday, November 9, 1922.)
[190—110]

On Thursday, November 9, 1922, at 9 o'clock A. M., all parties being present as before, the following further proceedings were had and done and testimony taken, to wit:

(Jury-roll called. All present.)

Mr. PATTERSON.—Mrs. Alapa has brought into court the cape referred to in her testimony.

(Mrs. Alapa produces cape, puts it on and displays it to the jury.)

Mr. ULRICH.—I will stipulate that is the cape she wore.

The COURT.—How was it fastened on?

Mrs. ALAPA.—Like this. (Illustrating.)

Mr. W. K. Wells, recalled to the stand, continues his testimony as follows:

Direct Examination (Continued).

(By Mr. PATTERSON.)

(Last question and answer of preceding day read by the reporter.)

Q. What did you do then, Mr. Wells?

A. We took him back to the car where Mrs. Alapa was and I said, "Is this the fellow" and she said, "Yes, that is the man" and I asked her, "Are you positive about that"? and she said, "Yes."

(Testimony of W. K. Wells.)

The COURT.—She identified him? A. Yes.

Q. What did you do then, Mr. Wells?

A. We drove down to the police station.

[191—111]

Cross-examination.

(By Mr. ULRICH.)

Q. Mr. Wells, how long have you been employed as a narcotic detective here in Honolulu?

A. About 14 months.

Q. And during that time it has been your duty, has it not, to make investigations and arrests with a view to the suppression of the opium traffic and traffic in other narcotic drugs? A. Yes, sir.

Q. And you have been accustomed to going to the boats coming from the Orient with a view of watching for smuggling? A. Yes, sir.

Q. You go down to about every boat that comes in from the Orient, I suppose?

A. No, sir; sometimes every other boat, or three boats, all depends if we haven't got anything to do around town.

Q. On this particular occasion, the occasion of the last arrival of the "President Wilson" from the Orient, you were detailed to go down and watch down there, were you? A. To what?

Q. To watch, watch for smuggling?

A. We went down there to see what we could see.

Q. You say that you have known Lee Choy for some time, is that right?

A. I have known him by sight.

(Testimony of W. K. Wells.)

Q. You have seen him coming on and off boats there? A. No, I seen him down in the wharf.

Q. Haven't you seen him go on and off boats before.

A. No, sir, down in the wharf, he was driving a truck. [192—112] At first I was not positive where I had seen him.

Q. You seen him drive the truck, seen him down around the wharf? A. Yes.

Q. I believe you said you knew that he had a pass to go on the boats, or did you say that?

A. I don't think so.

Q. You knew that he was working for Ah Chew Brothers, did you not?

A. After the third time I seen him then I was positive he was working for Ah Chew Brothers. That is why I asked him.

Q. What do you mean by the third time?

A. I saw him on Merchant Street.

Q. Didn't you know before that that he was working for Ah Chew Brothers?

A. I seen him on the wharf, but after I seen him the first and second time I was not positive where I had seen him.

Q. When you saw him the third time it came to you he was the man you saw driving Ah Chew Brothers' truck, working for them?

A. Yes, sir; that is why.

Q. What time did you go down to the wharf?

A. Around 10 o'clock.

Q. And who went down with you, if anybody?

(Testimony of W. K. Wells.)

A. Mr. Stevenson and Wrinkle.

Q. And you went down to the wharf about 10 o'clock that night? A. Yes. [193—113]

Q. When you got down to the wharf did you drive down in a car?

A. Yes, I drove down in my car.

Q. What kind of a car? A. Ford car.

Q. You parked that car where?

A. About 50 feet I think from the entrance, ewa side.

Q. Ran it up head on, facing the curb, right up against the curb, is that right? A. Yes.

Q. You stayed in the car?

A. When we first went down?

Q. Yes.

A. We went upstairs.

Q. All of you got out of the car and went upstairs? A. Yes.

Q. When you parked your car you of course turned off the engine, and left the tail-light burning.

A. Well, I had my tail-lights and head-lights dimmed, and tail-lights on.

Q. Head-light dimmed and tail-light burning. You went into the wharf and what did you do in there?

A. Mr. Wrinkle and Mr. Stevenson and I were leaning up against a rail near the gangway.

Q. Railing of the gangway? You mean right by the gangway going up on the boat? A. Yes.

(Testimony of W. K. Wells.)

Q. Nothing happened particularly while you were staying there? [194—114] A. No.

Q. How long did you stay there?

A. Twenty minutes, I think. Fifteen or twenty minutes.

Q. And then you arrived, I believe you say, about 10 o'clock? A. About that.

Q. And then you came back,—What did you do then after you stayed there, about 10 o'clock?

A. Mr. Wrinkle and him went on the steamer and I was going uptown.

Q. You came back and got into your car?

A. Yes, sir.

Q. And how long had you been in your car before you saw anybody? A. A few minutes, I think.

Q. Had you started your engine?

A. I had my engines running. I was going uptown and a fellow came up and talked to me.

Q. Who was the man? A. Eddie Drew.

Q. How long did he talk to you?

A. Three or four minutes, I think.

Q. So that it would be about half-past ten when you stopped talking with him?

A. About that, I think.

Q. And after you had stopped, after you had gotten through with that conversation, what happened?

A. Then I saw Mrs. Alapa.

Q. Was Drew still standing there with you when you saw her? [195—115] A. Yes.

Q. He was still standing there with you?

A. Yes.

(Testimony of W. K. Wells.)

Q. And she passed, as I understand you, in front of your car? A. Yes, sir.

Q. Going from the ewa direction?

A. From the Waikiki direction.

Q. You were away from the wharf?

A. Yes, sir.

Q. And she came?

A. From this direction. (Indicating.)

Q. From the direction of the wharf?

A. From the wharf.

Q. And you saw her. Did you recognize her?
Had you ever seen her before?

A. No, sir; only going on board the steamer.

Q. And—I thought you were getting to the time that you saw her. I have tried to take you from the time you got down to the wharf until you saw Mrs. Alapa. Now, then as I understand you the three of you got down to the wharf together, went on the wharf, stayed there for about 20 minutes and came back again and got in your automobile. And then you saw Mrs. Alapa going in front of your car. Where had you seen her before?

A. Going up the gangway on the steamer.

Q. While you were standing by the gangway there? A. Yes.

Q. With those three other men? A. Yes.
[196—116]

Q. Something did happen then while you were standing by the gangway?

A. Yes. I didn't understand you at first.

Q. When you got on the wharf there and stood

(Testimony of W. K. Wells.)

by the gangway how long had you been there before Mrs. Alapa went up the gangway?

A. I can't tell how long.

Q. Give me some idea, the latter part of the time, just after you arrived, or what?

A. Just after I arrived there.

Q. And Stevenson and Wrinkle were standing there with you?

A. Wrinkle and I. Stevenson was about 5 or 10 feet away from us.

Q. The custom inspector, Mr. Richardson, was he there too? A. He was in front of us.

Q. Were you close enough to the customs inspector to hear any conversation that took place between him and Mrs. Alapa? A. No, sir.

Q. All you know is as you say, you saw this woman going up the gang-plank?

A. He stopped her, said something to her, and then later on she went on board.

Q. And then what happened? Tell me anything that happened that was of any importance while you were standing there?

A. Well, I came downstairs again.

Q. And you went and got in your car and you were there talking for a few minutes, probably three or four minutes? [197—117]

A. About that, I think.

Q. With Drew. And then along came Mrs. Alapa in front of your car going in the ewa direction from the wharf?

(Testimony of W. K. Wells.)

A. From the wharf, and got in the car next to mine.

Q. How far was the car from yours?

A. Five feet, I think.

Q. Were the lights on in that car?

A. Yes, sir, had lights.

Q. Did you see who was driving the car?

A. Yes, sir, a Japanese.

Q. Did you know that Japanese? A. No, sir.

Q. Hadn't seen him before?

A. Not then, I have seen him before.

Q. You had not seen him before? A. No.

Q. Did you notice what he looked like at that time so you would know him when you saw him again?

A. I took a pretty good look at him then.

Q. Mrs. Alapa came and sat down in the back seat of that automobile? A. Yes, sir.

Q. Then what did you do?

A. Then I saw Lee Choy get in the car.

Q. Which car?

A. Then I saw Lee Choy get in the car with Mrs. Alapa.

Q. How long after Mrs. Alapa got in the car was it you saw this man get in the car?

A. A little while after. [198—118]

Q. What do you mean by a little while?

A. About a minute or so.

Q. I believe you said that as you looked at Mrs. Alapa she seemed to be puffed out or something of that sort.

(Testimony of W. K. Wells.)

The COURT.—Bulging out.

A. When she passed in front of me?

Q. She looked kind of bulgy? A. Yes.

Q. Did that mean anything to you?

A. Not until after Lee Choy got in the car, then I was kind of suspicious then.

Q. You were kind of suspicious then. I see. And you sat there to await developments, to see what they would do? A. No, they drove away.

Q. You just waited, and then drove away,—they drove away right away, did they? A. Yes.

Q. Your engine was going all the time?

A. Yes, sir.

Q. It did not occur to you did it to follow them and see what they did? A. No.

Q. You didn't make any effort to do anything at all by way of telling the other men about it?

A. Until I came back.

Q. You gave yourself time for reflection before you decided on any steps to be taken in the matter; gave yourself time [199—119] to think it over, didn't feel you wanted to act too hastily in the matter,—in a matter like that?

A. I don't understand you.

Q. You say your suspicions were aroused when Mrs. Alapa came down there looking bulgy. When you say your suspicions were aroused you thought perhaps there was some smuggling going on; why didn't you take some steps to follow them up. It would have been a very easy matter to trace them down, wouldn't it? A. Well, I didn't.

(Testimony of W. K. Wells.)

Q. Well I am trying to find out why you didn't.

A. I wanted to go back and tell the other two fellows about it.

Q. Instead of telling the other two fellows about it you took a ride downtown? A. Yes.

Q. And you did not say anything about it to the other two fellows until you saw her again?

A. No, sir; before that.

Q. What was this errand you were doing downtown?

Mr. PATTERSON.—Objected to as irrelevant and immaterial.

The COURT.—This is cross-examination. The objection will be overruled.

Q. What was this errand you were going on downtown, this urgent errand you had downtown?

A. Just rode uptown, that is all, an errand.

Q. To give yourself time to think it over?

Mr. PATTERSON.—I object. That is arguing with the witness. It is not his business what Mr. Wells was doing. [200—120]

The COURT.—It is commenting on the evidence. This is not the proper time to comment on the evidence.

Q. After having given yourself a little errand at the time you came back to the wharf. How long did this errand take you?

A. Five or ten minutes, I think.

Q. Then you went back to the wharf again?

A. To the wharf.

(Testimony of W. K. Wells.)

Q. And you hurried up to see these other two men, or did you go to see them?

A. I walked upstairs and I saw both of them going towards me.

Q. Had you left your car in the same place?

A. No, right in front of the stairway, Waikiki, right in front of the stairway.

Q. Does the curb curve in there or does it extend only across on account of the stairway? What I mean is, does not the road there run out to the wharf and the curb curve around about where that stairway is?

A. In front of the main gate, curves in front of the main gate.

Q. So that the stairway is immediately opposite the,—or in front of a straight piece of curb, is that right? A. No.

The COURT.—You mean the curb runs parallel to the street, or the stairway?

Q. I had an idea that the road ran into the wharf there, and that the curb was cut away to permit traffic to come [201—121] into the wharf at some place along there; the curb would curve in so that if you parked you would not be parked on a straight piece of curb. It may not be that there is any. What I want to know is this, Mr. Wells, is or is not it true that the curb that you ran your car up against, when you parked it there in front of the wharf, continues straight without any curve in it or anything of that sort past the stairway going up on to the wharf?

(Testimony of W. K. Wells.)

A. I think it continues to the main gate.

Q. And then curves in?

A. Yes, the curve that is? I am not sure about it.

Q. And that curve does not start until after you are past the stairway going up on the wharf?

A. From the main gate it starts to curve.

Q. The main thing I want to know is, is there a straight curb right in front of that stairway?

A. I am not sure.

Q. You ought to be able to say if it was there. You have been there enough times. You ought to know.

Mr. PATTERSON.—I object to that as argument.

The COURT.—That is for the jury to say. Objection sustained.

Q. When you parked your car there, Mr. Wells, was your car parked head on against a straight curb?

A. I don't know if it was a straight curb or not; it was up against the curb I know.

Q. You do know it was pointing directly at the stairway? A. My car was? [202—122]

Q. Yes? A. Yes.

Q. You came back and parked your car directly, you took 5 minutes uptown, so it is about a quarter before 11 or somewhere about that?

A. I don't remember.

Q. When you met these two men you reported that you saw this woman in a bulgy condition?

(Testimony of W. K. Wells.)

A. I told them when they were in my car, about it, when they came down and sat in my car.

Q. Then what did you do?

A. Then I, no sooner,—when I was telling them,—Mrs. Alapa passed in front of us and went upstairs.

Q. The second time you did not see Lee Choy at all? A. No, sir; only saw him once.

Q. She passed in front of you the same as she had passed before, excepting you were right in front of the stairway and could see her go upstairs?

A. Yes.

Q. Then what?

A. Then Mr. Stevenson and Mr. Wrinkle went over to the sidewalk and talked with Mr. McDuffie.

Q. What did you do? A. I sat in the car.

Q. Just stayed there, didn't make any effort to follow her on to the boat or anything of that sort. You thought you would wait for her?

A. Waiting to see if she would come back again.
[203—123]

Q. How long did you wait?

A. Didn't wait very long.

The COURT.—What do you mean by "very long"? About how long?

A. Ten minutes I suppose.

Q. And you saw her come back again?

A. Yes, sir.

Q. When you saw her come back again were all of you there in your car?

A. No, sir; Mr. Wrinkle and Stevenson and Mc-

(Testimony of W. K. Wells.)

Duffie were standing on the sidewalk. I was sitting in my car.

Q. And she came off down the steps?

A. Yes, sir.

Q. Who was it that talked to her first?

A. I think Mr. Stevenson if I am not mistaken.

Q. You were still in your car? A. Yes, sir.

Q. He stopped her right in front of the wharf there, is that right?

A. Near the main gate. Then they walked towards Waikiki of the main gate and they stood there for awhile.

Q. He stopped her before she had reached the street then, before she had come out on to the sidewalk?

A. No, he was on the sidewalk.

Q. Right in front of the wharf wasn't she?

A. Yes.

Q. By the main gate you mean the gate going on to the wharf, don't you? A. Yes.

Q. So he stopped her just as she got down from the stairs? [204—124]

A. Near the entrance to the main gate.

Q. Now that was before she had gotten away from the wharf and on to the street; wasn't it?

A. Yes, sir.

The COURT.—You said something a moment ago about being on the sidewalk?

A. That was on the sidewalk.

Q. By the sidewalk you mean the walk leading on to the wharf?

(Testimony of W. K. Wells.)

A. I call that whole place a sidewalk.

Q. What I mean is it was before she had gotten away from the wharf on to the sidewalk, right by the wharf?

A. He stopped her near the entrance of the main gate, then they walked towards Waikiki, on the sidewalk.

Q. Now how far away from the main gate was she, would you say, when they stopped?

A. A few feet I think, she did not stop there, she came walking towards Waikiki.

Q. But when they first stopped her or spoke to her she was just two or three feet from the main gate? A. About that.

Q. What did you do?

A. Then I backed out and went towards Waikiki way.

Q. Following along with them as they walked?

A. Yes, sir.

Q. How long did they walk towards Waikiki?

A. About 30 feet I think.

Q. You thought they might be going — you followed along. [205—125] You did not know how far they were going? A. No.

Q. Did you get out and join the circle there at all?

A. Stevenson said, "What do you want? Go and grab the Japanese." So I left my car there and went towards the machine.

Q. And you arrived with the Japanese?

(Testimony of W. K. Wells.)

A. And I brought them to where they were standing.

Q. Leaving your car over there?

A. No, where it was.'

Q. And then you took the woman and put her in the car with the Japanese, that the Japanese had been driving, is that right?

A. Stevenson and Wrinkle did that. I was standing with the Japanese.

Q. Did you go back with the Japanese to the car?

A. After they got in?

Q. When you had him standing over by the sidewalk. Did you go back?

A. No, he drove over with the car.

Q. With your car? A. No, with his car.

Q. Did you go back with him to the car that they had taken the woman to, to his car?

A. No.. He came over with his car, came over with his car to where they were standing.

Q. Then they all got into the other car?

A. Yes, sir. [206—126]

Q. And went back towards town?

A. Towards the police station.

Q. Did you hear anything said about any man that was,—that she was waiting for or anything of that sort? Did you hear Mrs. Alapa say anything about a man that she was supposed to be waiting for?

The COURT.—At or about the time of the arrest?

(Testimony of W. K. Wells.)

A. No, sir; because I was standing with the Japanese at the time.

Q. And they drove up town and you followed in your car, did you? A. Yes, sir.

Q. And how far behind did you follow?

A. Oh, quite a ways back.

The COURT.—What do you mean by that?

A. They drove up to the police station.

The COURT.—That don't tell us very much.

A. Thirty or forty yards.

Q. Their car was in sight all the time as you drove along, wasn't it? A. Yes, sir.

Q. And when you got up to Fort Street their car had stopped, or rather when you got up to Merchant Street their car had stopped and another car had stopped, and the two of them were standing not far apart along the curb, is that right?

A. No, sir; we drove right up to the police station.

Q. You did not stop? [207—127]

A. No, sir; that was on the second trip.

Q. You were present when the opium was brought out at this room?

A. I was outside of the door,—when the matron opened the door.

Q. You did not have any conversation with Mrs. Alapa yourself?

A. Stevenson and McDuffie did.

Q. Not you? A. No, sir.

Q. Did you go on this little trip that they took later to a house where there was a Chinese woman?

(Testimony of W. K. Wells.)

A. Yes, sir.

Q. You went in the car with them?

A. No, I was in my car.

Q. Did you go into that house? A. Yes, sir.

Q. Could you see the Chinese woman in there?

A. Yes, sir.

Q. You did not find any opium there?

A. No, sir.

Q. And you made a thorough search of the house, didn't you? A. Yes.

Q. This was about how long after you had first seen Mrs. Alapa?

A. When we searched the place?

Q. Yes.

The COURT.—You mean the first time when he saw her or the [208—128] second time?

Mr. ULRICH.—The first time.

A. An hour and a half, I think.

Q. Had you ever seen this Chinese woman before? A. No.

Q. Did you see any other Chinese that you had seen before there? A. No, sir.

Q. And then you drove away, following in your car, I suppose? A. Yes, sir.

Q. And they drove down by the wharf again?

A. Yes, sir.

Q. And came back up Fort Street? A. Yes.

Q. And you followed after, behind?

A. Yes. Not behind,—I don't know what street they went up. They said, "Let us go back to the

(Testimony of W. K. Wells.)

police station." I drove up Alakea and over on Merchant.

Q. As you came along Merchant you saw these cars standing there? A. Yes.

Q. Apparently you got there just at the time they had stopped, they had not gotten together; very little talking going on?

A. Both cars were standing still when I got there.

Q. And you got out and went over?

A. To where Stevenson was standing. [209—129]

Q. He was standing by the Japanese car?

A. In the front car.

Q. And that was the car you say you saw this man Lee Choy in? A. Lee Choy.

Q. You had him get out and took him over to the other car? A. Yes, sir.

Q. Did you see any other Chinaman there?

A. I saw Ching Tai standing on the sidewalk with Mr. McDuffie.

Q. You had seen him before, hadn't you?

A. Yes.

Q. You knew him? A. Yes.

Q. Before this evening, Mr. McDuffie, how many times had you seen Lee Choy to know him?

A. Three times.

Q. About three times. You had seen a great many other Chinese people down there at the wharf? A. Yes, sir.

Q. Drivers of trucks that were coming and going? A. No, sir; I was upstairs.

Q. I mean before, not this night,—before you had

(Testimony of W. K. Wells.)

seen on other occasions a great number of trucks and truck drivers for mercantile houses that visit the boats? A. Yes, sir.

Q. Do you think of any other one driver that you had seen to know as many as three times before this evening? [210—130]

A. I can't tell you.

Q. Lee Choy stands out prominently as the only man you can think of. He had sufficiently impressed his personality on you for you to remember him?

A. After the third time then I remembered.

Q. I am talking about before the third time. The first time you saw him that night at that time. As I understand it you say you had seen him around the wharf enough to know him, perhaps three times before that, is that right?

A. Yes, sir.

Q. I am asking you if you can think of any other Chinaman up to that time, truck driver you had seen around there, who had sufficiently impressed himself upon you to be remembered?

A. I saw Ah Chew, seen him down there lots of times.

Q. Is he one of the Ah Chew Brothers?

A. Yes, sir. He does not drive a truck though.

Q. The firm that Lee Choy works for. You had never talked with Lee Choy, had you?

A. No.

Q. You had never had any dealings of any kind with him before that time? A. No, sir.

(Testimony of W. K. Wells.)

Redirect Examination.

(By Mr. PATTERSON.)

Q. Mr. Wells, you are not a surveyor, are you?

A. No. [211—131]

Q. When you talk about thirty or forty feet or fifty or sixty yards, you are not positive of the distance, are you? A. No.

Q. You cannot go down there and show the exact place you were standing every minute of that night, can you? A. No.

Q. You don't know whether you walked at an angle of 35 or 40 degrees when you went in a certain direction? A. Yes.

Q. You have just a general idea of distances?

A. Yes.

Q. In reference to the people, people that are habitually down there on the wharf when the steamers come in, there are a lot of faces down there that you know? A. Well, some.

Q. Do you know some people that come down there every steamer, see them around there every time? A. At times.

Q. There are people you see frequently and you could say you know their faces and know them in that way, but don't know their names, isn't that correct? A. Yes.

Recross-examination.

(By Mr. ULRICH.)

Q. Although you are not a surveyor and cannot tell anything about thirty-five or forty-five degree angles and that [212—132] sort of thing, you

(Testimony of W. K. Wells.)

Q. Know what you are talking about when you say your car is in front of a particular spot?

A. I know what I am talking about; yes, sir.

Q. There is nothing indefinite or uncertain about that, is there? A. No.

Q. What do you mean when you say you are a short distance away from a certain place?

A. Say about 30 or 40,—I am not sure.

(Witness excused.) [213—133]

Testimony of C. T. Stevenson, for the Government.

Mr. C. T. STEVENSON, called and sworn as a witness for the prosecution, testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. What is your name? A. C. T. Stevenson.

Q. You are a narcotic agent?

A. Narcotic agent, Internal Revenue Service.

Q. Located here in Honolulu? A. I am.

Q. Do you know the defendant, Mr. Stevenson, over here? (Indicating.) A. I do.

Q. Do you know Mrs. Alapa? A. I do.

Q. On the night of the 18th of October of this year, or the early morning of the 19th, were you in an automobile with Chief McDuffie? A. I was.

Q. I call your attention to a particular time when— did you and Chief McDuffie see this defendant that night? A. We did.

Q. Where?

A. At the corner of Fort and Merchant Street.

(Testimony of C. T. Stevenson.)

Q. Did you see the woman, see the woman there at that time? A. She was there.

Q. Did you see the woman and the man together that night? A. I did.

Q. What happened? [214—134]

A. Well, the defendant here was in another machine when I first seen him, and agent Wells and agent Wrinkel came up to the machine where I had first seen this man, and in fact he was standing alongside of the machine. We took the defendant back to the machine that Mrs. Alapa was in and she identified him as the man that we were looking for.

Q. What did you do with the defendant then?

A. Took him down to the police station office.

Q. How did you take him down?

A. In an automobile.

Q. Where were you seated? A. Front seat.

Q. Where was she seated?

A. In the back seat.

Q. Where was the defendant seated?

A. In the back seat.

Q. You drove down from there to the police station? A. I did.

Q. Did you hear or notice anything while you were going down?

A. I heard the defendant say something which I was unable to hear the remark given. I don't know what it was. I turned around and when I turned around he was up close to her, I should say 12 or 14 inches space between the defendant and

(Testimony of C. T. Stevenson.)

the side of the seat of the car, the right-hand side of the car. Detective McDuffie was seated on the door of the car with his head inside of the machine.
[215—135]

Cross-examination.

(By Mr. ULRICH.)

Q. You heard him say something but were not able to hear what he said?

A. That is what attracted me. I turned around and as I turned around he was up against Mrs. Alapa, very close against her.

Q. When you saw the defendant at the corner of Merchant and Fort Street, was that the first time you had seen him that evening?

A. The first time that I had seen him that evening.

(Witness excused.)

(H. Miki was sworn to act as interpreter of Japanese.)

Testimony of Yasuhei Kamihara, for the Government.

YASUHEI KAMIHARA, was called and sworn as a witness for the prosecution, and testified as follows: (Through the official Japanese Interpreter, H. Miki.)

Direct Examination.

(By Mr. PATTERSON.)

Q. What is your name?

A. Yasuhei Kamihara.

Q. Where do you live, Mr. Kamihara?

(Testimony of Yasuhei Kamihara.)

A. Robello Lane, Palama.

Q. What is your business?

A. A driver of a rent car.

Q. Do you know the defendant in this case?

A. I do.

Q. Where is he?

A. He is the man sitting at that table, there, the middle man, next to the attorney. [216—136]

Q. What is his name? A. Lee Choy.

Q. Where is your place of business?

A. On Vineyard Street.

Q. This lady back here, do you know her?

A. I do.

Q. How long have you known the defendant, Lee Choy? A. A little over a month.

Q. Where did you first meet this defendant?

A. The first I got acquainted with him was a little over a month.

Q. And how did this happen?

A. It happened this way, I was on my stand when the telephone message came. I took the receiver and had a conversation with a Chinese. He said, "This is the Fort Street Ah Chew Brothers." He asked me who I was.

Mr. ULRICH.—I object to any conversation with any Chinese unless it is shown to be the defendant.

Mr. PATTERSON.—That is preliminary.

Q. You received a telephone message, did you?

A. Yes, I did.

Q. And after you received this telephone message what did you do? A. I went there.

(Testimony of Yasuhei Kamihara.)

Q. Went where?

A. To the store of Ah Chew Brothers on Fort Street.

Q. Was there anyone there to meet you?

A. This Chinese here was waiting for me.

Q. Then what happened?

A. Then he and I went to Young Street.
[217—137]

Q. Did he get in your automobile? A. He did.

Q. Then what did you do?

A. This Chinese told me to drive over to Young Street, so I drove the car to Young Street. He told me to wait and I waited.

Q. What seat did you sit in?

A. He sat in the front seat alongside of me.

Q. You say he waited there at Young Street?

A. I did.

Q. Then what happened?

A. This Chinese then got out of the car and went into a lane. As to which house he went to I do not know. I waited. He got on the car and then he says, "Let us go down."

Q. Where did you go to then?

A. Then we came along Beretania Street, and at the corner of Beretania and Alakea he told me to turn down Alakea.

Q. Then what happened?

A. Then he told me to turn down Alakea Street. I drove the car down Alakea Street and we went down the street that is parallel with the waterfront. I do not know the name. At that corner there he

(Testimony of Yasuhei Kamihara.)

told me to stop the car. I stopped the car and he got off and then I came back.

Mr. ULRICH.—I move to strike all this evidence, if the Court please, it appearing to have nothing to do with the case.

The COURT.—It will show they knew each other.

Q. Did you drive the defendant home that night?

A. He left the car there and I came back to my stand. [218—138]

Q. Did you have a chance to get a good look at him that night? A. I did.

Q. You are positive that is the same man as the defendant here?

A. I am positive. I am positive.

Q. About what time was that, about what date?

A. I could not say as to the date, but I think it was in the early part of the evening, probably around 7 o'clock.

Q. What day of the month?

A. I could not say. That is the first time I took this man on my car.

Q. When did you see him again, if you did see him?

A. I think,—wasn't it on the 18th of October that I was arrested? About two or three weeks previous to the date of that arrest, that he employed my car.

Q. Did he get in your car in this date?

A. He did.

Q. Did he tell you to go to any particular place?

A. Yes, he told me to go to Young Street.

Q. You are sure that is this defendant?

(Testimony of Yasuhei Kamihara.)

A. Yes, I am positive it was him.

Q. Did you go to Young Street? A. I did.

Q. What happened there?

A. He told me to wait and I waited for him.

Q. Do you know where he went to?

A. I don't know which house but he went into that lane, [219—139] the same lane that he went into on the first occasion.

Q. Did he come back? A. He did.

Q. From there where did you go?

A. Then he told me to go up Nuuanu Street. I went.

Q. From there where did you go?

A. When we got up Nuuanu Street he told me to drive into the lane. The lane is Kwong Tung Lane. I drove the car in the lane there, when the car got to the house of that white woman he told me to stop, go in the lane there, turn my car and come to the house there and wait for him, which I did.

Q. Then what happened?

A. Then when I had my car turned I had the car brought in front of this white woman's house. Lee Choy and this woman came out from the house to the place where my car was. Lee Choy got on the car and she, this white woman, stood outside of the car and they had a conversation. As to the nature of the conversation, I do not know.

Q. Do you speak pretty good English?

A. Why I could not speak very good English, but I can understand, "You go here, you go over there" when I am ordered.

(Testimony of Yasuhei Kamihara.)

Q. An ordinary conversation between white people, could you understand it?

A. I could not understand.

Q. Did you understand the conversation that I am carrying on with the interpreter here in English? A. I could not understand. [220—140]

Q. You would not know what we were speaking about? A. I could not understand.

Q. Then what happened?

A. Then we left her premises, drove down Nuuanu and when I got near Bishop Lane he told me to drive into that lane there and we drove into Bishop Lane and at the end of the lane the car stopped. Before he got out he told me to go to the home of that haole wahine and bring her down here. He went into the lane but as to which house I could not say.

Q. Did you go back and get the haole wahine?

A. I did.

Q. What did you do with her?

A. Then I went up to her home and she got in my car and we went down to Bishop Lane. I got down there and waited four or five minutes and I tooted my horn, wondered what became of the man, and all at once he made an appearance, then we drove on towards Waikiki and then afterwards turned home.

Q. Were the Chinaman and the lady in the car at the time? A. They were.

Q. Where did they sit, what part of the car were they? A. Back seats.

(Testimony of Yasuhei Kamihara.)

Q. And then you took the load home, you say?

A. We got back from this lane, this woman told me to stop the car at the entrance of the lane, and I stopped my car and she got off my car there. I turned my car and drove the man down to Mauna Kea Street between Hotel and Pauahi [221—141] and he got off my car there.

Q. After that time did you ever see the defendant again?

A. Yes, the next time it happened on the night of October the 18th.

Q. Where did you see the defendant that time?

A. That evening I went out on work. When I came back I was just putting my car into the stand when he made an appearance.

Q. Did he say anything?

A. He told me that he called me up two or three times on the telephone, and that I was not on the stand. I told him that I went out to work, I just got back.

Q. Did he know your name at this time?

A. He did.

Q. Now, Hara, going back to the first time you went to Ah Chew Brothers, you were called on the telephone. Did anybody ask for you or did they just call for a car?

A. I was the only man at that stand when I took this telephone. A certain name was mentioned. I said he is not on the stand, I was asked who I was and I said "Hara," taking the first letters off,

(Testimony of Yasuhei Kamihara.)

“Kami,” I said I was Hara, and he said come up to Ah Chew Brothers, so I went.

Q. At this last time when he arrived there at the stand did he employ your automobile? A. He did.

Q. And where did you go to?

A. He said he wanted a car. I said all right, and he got on the car, and I asked him where to, and he said Young Street and we went to Young Street. He told me to go to [222—142] Young Street, so I went to Young Street, to the place where I went on the two former occasions, and he told me to wait. I waited. Then after a little wait he came out and got on my car and said “back up” so I backed up. Then we came down around Beretania.

Q. Where did you go then?

A. Then he told me to go up Nuuanu, so I turned my car into Nuuanu and went up Nuuanu, then when we got up to Nuuanu street, when we got near to this Kwong Tung Lane, he told me to drive into this lane, so I drove my car into the lane. Before going to the house of this white woman he told me to slow the car up, so I did slow the car up, then this Chinese opened the door of the car and told me to go to the end of the lane and have my car turned around and so I did. He jumped off the car on to the sidewalk. Then when I had my car at the front of this white woman’s house I waited. Then they both, this white woman and Lee Choy, they both came up and got into my car and sat in the back seats. Then I was ordered to drive, so I did drive until we got into Nuuanu

(Testimony of Yasuhei Kamihara.)

Street, and he told me to go down and I said "Where?" for I didn't know where they were going. Then this Chinese said, "Pier 7." I was told to go down to Pier 7 and I drove my car down on Nuuanu into Queen, into Fort, into a street makai of the former Hackfeld Building. I don't know what that name is, then into Bishop Street, and when the car got near to the makai side of the road parallel with the waterfront Lee Choy told me to slow up. While getting off the car there he told me to wait at the makai side of that [223—143] beach road, so I waited. He walked toward the pier.

Q. Who got off the car first? A. Lee Choy.

Q. When did he get off?

A. He got off the car nearest to the mauka corner of Bishop and Ala Moana Road, about 30 per cent of the road, that is where he got off the road.

Q. About 30 per cent?

A. About three-tenths of the way of the Ala Moana Road.

Q. You mean the car was out toward the middle of the street when he got off?

A. The car was near the center of the road, when he got off.

Q. Still in motion? A. Yes, going slowly.

Q. Where was he when he got off?

A. Going towards pier 7. There were a lot of cars around there.

Q. What did the woman do?

A. I stopped my car on the other side of the

(Testimony of Yasuhei Kamihara.)

street near the sidewalk and after waiting for a few moments she got off and walked toward pier 7.

Q. What did you do then?

A. After a wait the white woman made an appearance, she came along the sidewalk, she got on the car. Right after that Lee Choy got on my car by walking across behind my car, and got on my car on this side of the car. (Indicating.)

Q. What happened then?

A. Then after both of them got on the car there Lee Choy [224—144] told me to back the car up, so I did, and went into Bishop Street.

Q. What then?

A. Then when we got right to the corner of King and Bishop Streets I asked where to; he said Beretania Street. I had intended to go around King Street, but Lee Choy told me to go Hotel on Bishop Street, so I did. I went as far as Hotel and then I turned and came a little ways on Hotel before going into Union, Union to Beretania, and then when the car got on the edge of the corner of Union and Beretania Streets I asked where, then I was told to go towards Kalihi; then when the car got to the corner or near to the corner of Beretania and Nuuanu I asked where; then Lee Choy told me to go to the old baseball grounds; then I drove my car along Beretania when we got near that Japanese automobile stand I was told to drive into the lane in the street that leads from Beretania into Kukui. I drove into that street, and at the corner nearest to Kukui I was told to stop my car by Lee

(Testimony of Yasuhei Kamihara.)

Choy. I stopped my car and then he told me to wait. After I stopped my car this white woman and Lee Choy got off my car and I was told to wait. I saw them go to a lane on the opposite side of where my car stopped. They went into the lane. As to which house I do not know.

Q. Did they come back?

A. After a short wait they both came back.

Q. Then where did you go?

A. They both got on the car. I asked, "Where to?" "To [225—145] the same place." Then I drove my car into Kukui. The Kukui Street bridge was then being repaired. I could not cross that bridge so I drove up mauka on College Walk, then into Vineyard, from Vineyard into River and down to Queen. When I got to Kukui Street where the bridge was being repaired I had intention to go back. He said, "Never mind, go ahead." I went down Queen into Fort, makai of the former Hackfeld Building. When I got to Bishop Street, I had already crossed the crossing, I had the intention of turning down, but he said go ahead. Then I turned down a street on the Waikiki side of the ice plant. That is Alakea Street, went along the street, went to the corner of Alakea and Ala Moana Road. Lee Choy told me to slow up. I slowed my car and he got off the car. He said, "Go on the other side of the street and wait for me," so I did. Then after my car came to a stop a few moments after that, this white woman got out of my car and

(Testimony of Yasuhei Kamihara.)

walked towards pier 7. Where she went I don't know.

Q. About what time of the day was it?

A. When I first picked him up, when he first got on my car, it must have been about either 9 or a quarter to 9.

Q. And the last time that you arrived at the wharf that you have just testified about, about what time was that?

A. I did not look at my time. I could not say what time it was.

Q. To your best judgment?

A. It was probably a little after ten. [226—146]

Q. That is the second trip back. Was Lee Choy in the car that time?

A. Yes, he was on the car. He got off the car at that point that is already stated.

Q. After or before the car had stopped?

A. The car was still in motion.

Q. And after the woman had left the car on the second trip what was the next thing that happened to you?

A. After waiting for some time one of the officers that was here came to a place where I was standing and asked me some questions, and I told him what transpired, as I have already testified here.

The COURT.—Who was it?

The INTERPRETER.—He said something about a white woman.

Mr. ULRICH.—Objected to.

(Testimony of Yasuhei Kamihara.)

The COURT.—Do you know which officer it was? Would you know him if you saw him?

A. Yes, I can recognize him.

The COURT.—Do you know his name?

A. I don't know his name. I only know Mr. McDuffie.

The COURT.—(After two men are brought into courtroom.) Which one of those men?

A. The shorter man of the two, but all these men were there. This man on this side and another man who stepped out just now. They were all down there.

The COURT.—Who was the one that came up and had some conversation with you?

A. The shorter man of the two. (Referring to Mr. Wells.)

Q. Then what did they do? Did they do anything with you then? [227—147]

A. After this conversation with this officer he got on my car and ordered me to go to the place where this woman was standing among McDuffie and the other officers that I have pointed out, a distance of probably 60 or 70 feet. I drove the car to that point there, then they all got in my car.

Q. They all got in your car. Where did you go from there?

A. As to the chief, that is McDuffie, whether he got on my car or not I could not testify to that. Then we went to the police station. On the way down to the police station this tall officer that I

(Testimony of Yasuhei Kamihara.)

pointed out he sat alongside of me. Then he asked me how many were they.

Mr. ULRICH.—I object to the conversation.

Mr. PATTERSON.—(To the interpreter.) Tell him not to say anything about the conversation.

A. We went to the police station. At the police station there was a short examination. After that examination I took the crowd up to the old baseball grounds.

Q. Did you take them to the same place where you delivered the first load of opium?

Mr. ULRICH.—Objected to.

Mr. PATTERSON.—Withdrawn.

Q. Did you take these people to the same place where the Chinaman and this woman had gone on this first trip? A. I did.

Q. Was the woman along? [228—148]

A. She was.

Q. What did they do?

A. We went to this point where the woman and this Chinese first got out. The car was stopped. They all got out, and these other officers that was over there got hold of my arm and took me into this Chinese house and searched,—a search was made there.

Q. Then where did you go?

(Recess until 10:45 A. M. from 10:30 A. M.)

Q. And from there where did you go?

A. And I got on my car and we all went down to pier 7. The car was stopped at the entrance to

(Testimony of Yasuhei Kamihara.)

pier 7, all of us got off on the sidewalk and there we waited.

Q. From there where did you go?

A. Then from there we went to the police station.

Q. What is the number of your car? A. 6703.

Q. Is it a Buick car?

A. It is a Buick car; yes, sir.

Q. Then when you went to the police station what happened?

A. While coming back from the police station when my car got near to the corner of Fort and Merchant, someone in my car called out "Stop," and a car, I do not know whose car, passed my car at that time and was ordered to stop, so I stopped.

Q. And who was in the other car?

A. In that car was Lee Choy and another Chinaman. I don't see him around here to-day. He was here the other day. He was a stoutish Chinese.
[229—149]

Q. Then tell us what happened?

A. Then Lee Choy was placed into my car and we all went down to the police station.

Q. Then what happened?

A. Then Lee Choy was placed down below at the police station first. I followed.

Q. Did you stay in the police station that night?

A. I did.

Q. What happened the next morning, if anything?

A. The next morning a little after breakfast, I didn't have anything to eat that morning, at a point

(Testimony of Yasuhei Kamihara.)

I suppose between the kitchen and the toilet, Lee Choy was there and was sitting on this side near a table. He called me like that, then I went. I did not know what was the matter. When we got nearer to the toilet Lee Choy spoke to me. He said that if I would say that I did not know Lee Choy that he, Lee Choy, would say the same thing.

Q. And was anything else said?

A. Nothing else.

Cross-examination by Mr. ULRICH.

(By Mr. PATTERSON.)

Q. This all happened in the city and county of Honolulu, Territory of Hawaii? A. Yes.

Q. (By Mr. ULRICH.) Kamihara, how long have you known Mrs. Alapa?

A. Seven or eight months.

Q. You have driven her around quite a good deal in that time, have you not? [230—150]

A. Yes, every time she called me up on the phone, I went up there to get her.

Q. Now you say that you have known Lee Choy for about a month or a little over a month, is that right? A. Yes.

A. And that the first time that you met him was on the occasion when you were called over to Ah Chew Brothers and he took your car and took a ride along the various streets that you told us about, is that right? A. Yes, positive.

Q. And you have told us about these various streets that you went on that day, where you turned and just what streets you took. You are positive

(Testimony of Yasuhei Kamihara.)

you went on exactly those streets and no other streets? A. Yes.

Q. Just as positive as you are of anything else you have testified to? A. Yes.

Q. You got Lee Choy at about what time did you say, on that first day?

A. It was probably a little before 7, somewhere along there.

Q. Before 7. And you went over to Ah Chew Brothers and from there took him up on to Young Street, is that right? A. Yes.

Q. Stopping at a certain place on Young Street, and you went into a lane? A. Yes.

Q. And after he had been in that lane he came out and got into your car again and told you to drive where? [231—151]

A. He says downtown, toward town.

Q. And you drove down Young Street how far toward town?

A. I came along Young Street, Pikoi and into Beretania.

Q. You are sure you turned down Pikoi and not some other street and got into Beretania, is that right?

A. No, you do not turn down, you turn up into Beretania from Pikoi.

Q. You are sure you turned off of Young Street up to Beretania Street, going on Pikoi and not some other street, is that right? A. I am sure of that.

Q. And as you testified here this morning, you know positively just exactly what corners you

(Testimony of Yasuhei Kamihara.)

turned, where you went throughout all the time you had Lee Choy with you, that evening, is that right? A. Yes.

Q. How was Lee Choy dressed that night?

A. He was in his shirt-sleeves.

Q. What kind of trousers did he have on?

A. It was,—he had dark colored trousers, whether striped or not I could not see it.

Q. All right. Nothing particular happened on this occasion when you drove him around in his shirt-sleeves, driving to Young Street,—you drove him down to the waterfront and left him down there? A. Yes, sir; that is all.

Q. Now how long was it after that that you saw him again?

A. Two or three weeks previous to the 18th.

Q. But how long after the first time that you saw him? [232—152]

A. Oh, within a week.

Q. And when you saw him the second time how was he dressed?

A. I think he was in a dark suit. He had a coat on.

Q. You came to him the second time,—I believe the second time he came to your stand?

A. Yes, stand.

Q. And when you came in you,—just after you had come in he came up and asked you for a car?

A. As to whether I had come back from my work or whether I had come from my home, when he made an appearance there, I could not very well state.

(Testimony of Yasuhei Kamihara.)

Q. I do not care where he had been. The idea is it was just after you came there that he came up and got your car at the stand?

A. Yes, he came there just about the time I got to my stand.

Q. About what time was that?

A. I think it was a little after 7.

Q. Were there other automobiles there on the stand so that he could have taken those if he wanted to?

A. I think there was a car there, but as to whether the driver was there or not I could not say.

Q. He was waiting for you to come?

A. As to that I could not say, because he walked towards me.

Q. And that is the only other time you had ever seen him before that, when you took him on this little drive. Had you ever talked with him at all excepting his [233—153] directing you to go here and there, as the case might be?

A. No other conversation except he ordered where to go.

Q. When he got into your car on the second occasion at 7 o'clock, where did he tell you to go?

A. To Young Street.

Q. And you went to Young Street, the same place as you had been before, is that right? A. Yes.

Q. And after he had gone into this lane on Young Street and had come out again, where did he go?

A. Then I took a course along Young up Pikoi, up Beretania.

(Testimony of Yasuhei Kamihara.)

Q. Where did he tell you to go, any place or any person's house, or simply tell you to go and turn on Pikoi, and go up Beretania, or what?

A. When we got near to Nuuanu Street he told me to go up Nuuanu.

Q. But before you got to Nuuanu Street had he told you where to go, along Beretania or what?

A. He did not say anything.

Q. How did you know where to go if he did not say anything?

A. Why I asked him where to go and he said go up Nuuanu.

Q. Did he tell you to go up Nuuanu when you first started out? Did he tell you, "Go up Nuuanu Street" or "Go downtown" or what did he say?

A. He did not say that at that point.

Q. What I want to know, Mr. Hara, is whether or not you were given any instructions when you first started out, [234—154] after you got through with the business on Young Street did he tell you to go downtown to Nuuanu Street or any street or house or anything at all by way of directing you as to where you should go?

A. He did not say where to go.

Q. You just started off and did not know where you were going?

A. But he told me to go down.

Q. When you got to Nuuanu Street he told you to turn up Nuuanu Street?

A. He told me to go up, yes.

(Testimony of Yasuhei Kamihara.)

Q. When you had gone up Nuuanu Street way he told you to turn into the street, did he?

A. Yes, he told me to go into a side street.

Q. All these instructions were given just as you went along? You had no idea where you were going until you got to the particular corner where you were going to turn?

A. I didn't know where he wanted me to go. He gave me orders just about the point where I had to turn.

Q. Although you had known this woman for some time you had never said anything to Lee Choy about her, had you? A. I did not.

Q. You had not told him where she was living or anything about her? A. I did not.

Q. When he told you to turn down this lane and finally to stop where did you stop?

A. He told me to stop my car in front of this white woman's [235—155] house and I stopped. While getting off he said, "Go to the end of the lane and come back" so I did.

Q. He simply said stop in front of this house, not naming it as any individual's house?

A. Told me to stop in front of the house.

Q. When he stopped there you recognized the house you had been coming to get this woman before? A. Yes, I know the house.

Q. Did you see where he went after he got out of the car?

A. The car stopped in front of this house and he went up these steps?

(Testimony of Yasuhei Kamihara.)

Q. You did not see where he went, all you saw was him going up the steps?

A. It must be that house, her home; that is the only steps leading up to it.

Q. You did not see him go into the house?

A. I did not see that.

Q. Did you see her come out or anything of that sort?

A. I did not see her come out from that house there at the time I first stopped my car.

The COURT.—Could you see the front door of the house from the automobile where you were sitting?

A. You cannot see the door because it is on the side. No.

Q. The door is on the side of the house?

A. You could not see that door when you enter that lane, from the main street, but after you turn your car in that lane to go out you can then see the door. The door [236—156] faces you.

Q. In other words, the door does not face on the lane, is that right?

A. It does not face the lane. It faces inside.

Q. In order to get to the door you have to go inside of another sort of a little alleyway, and another house (counsel draws diagram); the house would be in here, you would have to go from another alley, come from the side?

A. This is wrong. You have a wrong diagram here. (Witness draws diagram.) This is how it is. This is Nuuanu going up. This is the lane;

(Testimony of Yasuhei Kamihara.)

this is an apartment house; this is a veranda. The door opens that way. This is the place.

Mr. ULRICH.—I would like to introduce that.

Mr. PATTERSON.—No objection.

(Drawing offered in evidence received and marked as Defendant's Exhibit 1.)

The COURT.—Have you ever been inside that house?

A. Yes, I have been inside of that house. I got a telephone message and go there and she is not ready and she says come into the house and wait, so I go inside the house and wait.

Q. Have you taken any other men to that house?

A. I have not.

Q. You are quite emphatic about that are you?

A. I am sure of that.

Mr. PATTERSON.—The truth,—I object to asking if the particular remark is emphatic.

The COURT.—I presume he means "are you sure of that." [237—157] Perhaps it is grammatically the proper thing, or word. I think we all understand it. I see nothing out of the way in that.

Q. Now, Mr. Hara, have you,—after you waited there for a few minutes and the man came out with the woman and talked for a moment or so,—you could not hear or do not understand enough English to understand what they were talking about,—and got into the car and told you to drive out to some place else, is that right?

(Testimony of Yasuhei Kamihara.)

A. Lee Choy was on the car. He told me to go down Nuuanu so I did.

Q. You took him into this lane, and he told you to go back and get the woman? A. Yes.

Q. When you got back there she was waiting for you, is that right?

A. Yes, she was outside the verandah, and went into this lane and I turned my car around and when I got there she was waiting.

Q. I understand you heard nothing that was said between Lee Choy and this woman on any occasion, is that right?

A. I could not hear what they were saying.

Q. You have no idea what they were driving around for or what they were doing at any time you have been testifying to?

A. I could not say what their intent was to ride in the car. They were talking there, talking low; I could not hear.

Q. Had either of them ever said anything to you about [238—158] opium?

A. I did not hear anything about that.

Q. You took them for a drive out to Waikiki?

A. Yes, went out Waikiki.

Q. And how long were you driving?

A. Forty or fifty minutes.

Q. You know nothing about what happened except you drove the car out and back again? Did you drive to Kaimuki or simply out to Waikiki and back?

A. We did not go as far as Kaimuki. I do not

(Testimony of Yasuhei Kamihara.)

know what was going on or what statements was made. Drove up Kapahulu Road in to Kaimuki.

Q. Did you know Lee Choy's name at this time?

A. At that particular time I did not know his name as that of Lee Choy, but I knew his face.

Q. Did you know anything about his name at all? Did you know his name as anything but Lee Choy?

A. I did not ask his name; I do not know.

Q. *What* did you first know what his name was?

A. After this arrest.

Q. The next time that you saw this man was on the night of the arrest, is that right?

A. Yes, night of the arrest.

Q. What time did you first see him on that night?

A. Probably 15 or 20 minutes before 9.

Q. Where did you see him?

A. He came to my stand.

Q. Your stand is where?

A. On Vineyard Street. [239—159]

Q. Whereabouts on Vineyard?

A. Very close to River Street, near River Street.

Q. Where did you tell him to go?

A. I just came back from my work. Lee Choy came there and said, "I called you up on the phone two or three times but you were out." I told him that I was out working, and he told me to go out Young Street, so I drove him out there.

Q. He went to the same place on Young Street you had been these other two times, is that right? A. Yes.

(Testimony of Yasuhei Kamihara.)

Q. And when you left that house, after he had gone in and came out again, where did he tell you to go? A. He said to me, "Turn the car around."

Q. You turned the car around; then what did you say?

A. Then he said go up Keeaumoku, along Beretania and to town.

Q. You followed these same directions and you went down Beretania Street, is that right?

A. Yes. Then when I got near to the corner of Beretania and Nuuanu I asked him where to.

Q. And what did he say?

A. He told me to go up Nuuanu.

Q. And you went up Nuuanu? A. Yes.

Q. And then where did he tell you to go?

A. When I got near this lane, that is Kwong Tong Lane, he told me to go in that lane.

Q. You were surprised to find yourself following exactly [240—160] the same road as you were following before, is that right?

A. No, I was not surprised.

Q. You are quite sure that to save himself the trouble of telling you where to turn at the various corners, when you reached them he did not tell you to go where you had gone at first,—the same place you had taken him before?

A. Sometimes I asked him where to; sometime he tells me before I asked him where to go.

Q. But on this occasion he kept you in the dark as to his ultimate destination until you got there?

A. Yes.

(Testimony of Yasuhei Kamihara.)

Q. Now, what time did you arrive at this house this night?

A. I could not say the exact time, because I could not look at my watch all the time.

Q. Now what time can you fix, at any time around there?

A. Yes, I think it was 15 or 20 minutes to 9.

The COURT.—Do you keep notes of the length of time he is driving and charge accordingly?

A. When he orders me, or when an order is received that I am to drive the car by the hour, then I look at the time, otherwise not.

Q. And you left the garage on this trip about a quarter to nine. Bearing that fact in mind, bearing the fact of your trip out on Young Street, going in the house out there, and driving to Nuuanu Street, and all that, what time would you say it was when you reached this [241—161] woman's house? A. It was probably near 9:30.

Q. How long did you stay there before you took them away? A. Probably five minutes.

Q. He went—you saw him go into the house this time, did you? A. I saw him go in.

Q. And then the woman came out and you drove them both down to the pier, being directed where to turn as you reached the various corners?

A. The both of them got on the car.

Q. You drove them down to the pier, you not being told to go to pier 7; you turned this street and that street until you got down there, is that right?

A. The order to go down to pier 7 was given me,

(Testimony of Yasuhei Kamihara.)

I think, when I reached near the corner of Vineyard and Nuuanu.

Q. Before you reached there, as you were approaching the Ala Moana Road, or as I believe you say you had gotten out into the Ala Moana Road, Lee Choy told you to slow down and he jumped off, is that right?

A. Before he got off the car he told me to slow my car down, then he got off the car. It was nearest to the mauka corner.

Q. It was after you had gotten out into the big wide road down there in front of the wharf, is that right?

A. The corner had already been crossed.

Q. He got out out in that road?

A. Yes. [242—162]

Q. You went over and parked your car facing the curb, is that right? A. Yes.

Q. Where did you park your car with reference to pier 7, on the ewa side of the pier or on the Waikiki side of the pier? A. On the ewa side.

Q. How far from the pier, would you say?

A. Probably a hundred feet; I could not say exactly, but I think it was about.

Q. After Lee Choy had gone to the middle of the street how long was it before the woman left your car?

A. Probably two or three minutes.

Q. How long were they gone?

A. Within ten or fifteen minutes.

Q. Did you see any other man around there that

(Testimony of Yasuhei Kamihara.)

you know or have since known, while waiting for Lee Choy and this woman to come back?

A. I did not.

Q. When the woman came back did you notice anything peculiar about her appearance?

A. She did not look very much different to me from the time she got off and the time she came back.

Q. Nothing about her that attracted your attention to her appearance?

A. I did not notice anything out of the ordinary.

Q. She simply came in the car, sat down, waited there for awhile, and then Lee Choy came out there and got in. A. Yes. [243—163]

Q. And then where did you go to; where did he tell you to go?

A. He told me to back the car up so I backed the car and turned up Bishop Street, and drove up Bishop Street.

Q. Then he told you where to go when you came to the various corners, or did he tell you where he wanted to go?

A. As we neared the corner of King and Bishop Street I asked him where to, then he said to Beretania Street.

Q. And he continued to direct you without giving the various streets where he turned over from corner to corner, until you finally reached the place where he told you to stop?

A. Well, my car was in motion and when I asked him what direction then he gave me.

(Testimony of Yasuhei Kamihara.)

Q. Finally you came to a place where you stopped and where was that place?

A. I finally stopped my car at the point he told me to stop. This point is in a side street that leads from Beretania to Kukui, and the point is nearest to Kukui Street.

Q. Did you go inside the house? A. I did.

Q. Or waited outside while they went inside?

A. I was on the car.

Q. You didn't see anybody who was in the car or who came out of the house?

A. You could not see that house, a private place.

Q. You could not see the house from where you stopped? [244—164]

A. You could not see the house. They went in a lane.

Q. So you don't know, or you didn't know until you went back the second time where that house was, did you?

A. I did not know at that time, but when the detectives went there with me I found out the house.

Q. After you stayed there for awhile you went back to the wharf?

A. He told me to go down to the same place.

Q. You went and stopped at the same place?

A. It was not at the same spot, because when I got to the corner of Bishop Street and that side street,—I had already passed the corner,—had intention of turning my car. He said, "Never mind."

Q. Practically the same thing happened as happened before? He jumped out of the car and the

(Testimony of Yasuhei Kamihara.)

woman waited a little while and she went on board and went and left you, and then you waited and finally she came back? A. Yes.

Q. So that Lee Choy left the automobile and jumped out before it stopped and you did not see him again until you saw him later,—until the time you were all on the way to the police station?

A. Yes, I did not see him until I saw him near the corner of Merchant and Fort.

Q. Now never mind about the rest of the things until we come to the point where you are supposed to go on that [245—165] trip back to the house where you had taken this woman before. What sort of directions did you receive and from whom, as to how you should go to that house or where you should go when you left the police station?

A. The detective told me to drive my car to all those points where I went.

Q. Did he say anything about driving to a house where you had been, to retrace the whole path?

A. There was that white woman in the car there. I was ordered to drive my car to the point where I stopped, so I went.

Q. You stopped the car in the same place where you were before? A. Yes.

Q. Where you could not see the house where they had gone into?

A. You could not see the house.

Q. They took you out and took you in the house?

A. That fellow out there took me into this house.

Q. Now after this was all over, and you finally

(Testimony of Yasuhei Kamihara.)

got back to the police station again, having picked up Lee Choy on the way,—by the way,—I want to ask one question in connection with that. You say that you, as you passed this car, or as this car passed you, about Fort and Merchant Streets,—this is after you had been down to the wharf, somebody from your car called out or did you say somebody from the other car called out?

A. After leaving pier 7 we came up Fort Street. My orders were to drive to the police station. When we [246—166] got near the corner there a car pulled up and I think that car stopped near to the Bank of Hawaii and something was said,—I don't know what it was,—and the detective must have heard that, and the detective ordered me to stop my car.

Q. What I am trying to find out, the only thing so far as this question is concerned, is whether or not the call was made from your car or the other car by reason of which the cars came to a stop?

A. These,—this car had already passed my car going up Fort Street. My orders were to go to the police station. I think it was a voice from the other car that made the car stop.

Q. A voice from the other car, the car that had in it, as you later discovered, Lee Choy and this other Chinaman? A. Yes.

Q. Did you hear anything said about Yee Yap by anybody in your car?

A. Yee Yap? I did not hear.

(Testimony of Yasuhei Kamihara.)

Q. When you went back to the police station you were taken downstairs and locked up, weren't you?

A. Yes.

Q. Did they tell you why they were locking you up there? A. I did not hear.

Q. You did not know what it was all about?

A. I did not know.

Q. Did you make any effort to get hold of a lawyer, or [247—167] get bail, or have yourself released in any way?

A. The next morning, yes, I did. I asked one of the men down there, a Japanese, to telephone over to my home the next morning, because I was very much worried about my family.

Q. So far as you know you were never charged with anything, but were simply held there overnight and then released in the morning, is that right?

A. No, I was brought up here.

Q. Brought up here to see Mr. Patterson, is that right? A. I did, yes.

Q. And you were examined by him, were you?

A. Examined by him.

Q. And then were released without being charged with anything, is that right?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—I think it is part of the case. Objection will be overruled.

Mr. PATTERSON.—I will admit that; I will admit those other people were not charged.

(Testimony of Yasuhei Kamihara.)

The COURT.—I think it is proper cross-examination.

The WITNESS.—I never heard anything.

Q. I am just going to ask one more question, and that is this: Isn't it a fact that for some months past you have been acting as a procurer or as a person who secures customers or men for Mrs. Alapa in the course of her practice of prostitution? [248—168]

Mr. PATTERSON.—That is objected to, may it please the Court, on the ground it is incompetent, irrelevant and immaterial.

The COURT.—The question is substantially as asked very early in this cross-examination. The question it seems to me has been asked, Mr. Ulrich.

Mr. PATTERSON.—I am not sure, your Honor. If there is any argument in this matter—if the question has been asked, there is no occasion of asking it again.

The COURT.—Was it not asked in substantially the same form very early in the examination?

(Argument.)

The COURT.—It seems to discredit the testimony of this witness, although it may incidentally bear on Mrs. Alapa's testimony.

Mr. PATTERSON.—Objection withdrawn.

(Question read by the reporter.)

A. I have not done that; this woman or any other woman.

Q. Do you know a man by the name of Wong Yuen?

Mr. PATTERSON.—Objected to—

The COURT.—I don't know the purpose of the question. I think you cannot enter into the trial of these issues. Of course questions can be put to test the credibility of the witness. The fact that it might incidentally reflect upon another would be no objection. I don't know the purpose of this question. I will assume it is proper for the time being. We will assume it is proper.

Mr. ULRICH.—I propose to ask the question as to whether he knows this man, as to whether or not he has not had [249—169] a certain transaction with this man, with reference to undertaking to get this woman for him.

The COURT.—That is whether or not this man had?

Mr. ULRICH.—Whether or not it is not a fact he had undertaken to get this woman for this man, the particular man.

The COURT.—On the theory, with the understanding, that you will be bound by his answer. I will not consent that you should bring in that other man to establish that.

Mr. ULRICH.—I will be bound by this witness at this time. As to whether she is that character or she is not that character of woman, regarding other evidence, we will argue it at that time. I think of course we can do it.

(Argument.)

The COURT.—Would not that go to the credibility of the witness? I am inclined to believe that

(Testimony of Yasuhei Kamihara.)

the question is proper. If it is desired by counsel, and it is frequently done, the jury is not to consider—I will say to you now, Gentlemen of the Jury, any question put by counsel which is not brought forth by any evidence, you will disregard the questions or question of counsel,—the question of counsel is not evidence.

Mr. PATTERSON.—I still think this question should not be allowed.

The COURT.—It will go to the character and credit of this witness' testimony, and I will permit this question.

(Question read by reporter.) [250—170]

A. I do not know him.

Q. I will ask you this. You probably do not know his name. I will ask you this question, and take a ruling of the Court. Is it not a fact that within the past three or four days, we will say within the past week, you have had a conversation with a man, a Chinese man, in which Mrs. Alapa, who had been seen riding in your automobile, was discussed between you, and which you agreed to procure her for this man for the purpose of prostitution?

The COURT.—This, Mr. Ulrich, from your question, has occurred since the alleged commission of the offense for which she is now on trial.

Mr. PATTERSON.—I submit the question is incompetent, irrelevant and immaterial and not proper cross-examination and not proper for any purpose. It does not seek to impeach this witness of any

testimony that has been offered by him in evidence, and so, may it please the Court, I say that questions of this kind gather atmosphere in the course of the trial and the jury get to believe them.

The COURT.—We can safely assume that the jury will abide by the instructions of the Court. They are intelligent men, and as I have told them, they are not to consider any question put by counsel. The question is not evidence, but only the answer you get from the witness on the witness-stand. I think this is objectionable, all these matters rest in the discretion of the Court. This having occurred subsequent to the alleged offense, in fact it having been alleged to have [251—171] occurred quite recently, I think at this time I will sustain the objection on that grounds.

Mr. ULRICH.—Let my exception appear in the record.

The COURT.—Exception allowed.

(Thereupon an adjournment was taken until 9 o'clock A. M., Friday, November 10, 1922.) [252—172]

On Friday, November 10, 1922, at 9 o'clock A. M., all parties to the action being present, the following further proceedings were had and done and testimony taken:

(Jurors all present.)

The COURT.—I have decided that you may ask that question with regard to the Chinaman that you put yesterday just before adjournment, Mr. Ulrich.

(Testimony of Yasuhei Kamihara.)

YASUHEI KAMIHARA, resumed the stand as a witness for the prosecution, and continued his examination as follows: (Through the Official Japanese Interpreter H. Miki.)

Cross-examination (Resumed).

(By Mr. ULRICH.)

Q. Is it not true that within the past few days, probably a week, at least within the past week, you made an arrangement with a certain Chinaman by which you agreed to procure this woman for the purposes of prostitution,—some Chinaman?

A. There was nothing of that kind.

Q. Since Mrs. Alapa gave her testimony to the Court have you talked with her about this case, or about her testimony in the case?

A. Nothing of that sort.

Q. Have you talked over what you were going to testify to in this case with Mr. Patterson, the United States attorney?

A. Yes, I have talked with him; I was questioned.

Q. Has anything been said to you about the possibility [253—173] of the confiscation of your automobile for carrying opium?

A. Nothing of that sort.

Q. You have been offered no immunity by the prosecution or any promise of immunity if you would testify in this case?

A. There was no promise.

Q. It has not been suggested to you that it would

(Testimony of Yasuhei Kamihara.)

be easier for you or that it would be better for you if you would give your testimony in this case?

A. I never heard anything of that sort.

Q. You are simply making a clean breast of it because you think it is the right thing to do?

A. Yes, I am telling the truth.

(Witness excused.)

Mr. PATTERSON.—The prosecution rests, your Honor.

Mr. ULRICH.—At this time we will present a motion and ask for a directed verdict. As explanatory of the motion which we now present, let me call the Court's attention to the fact that the indictment purports to be in two counts, the first count charging the defendant with unlawfully, fraudulently, knowingly and feloniously receiving, concealing, buying, selling and facilitating the transportation, concealment and sale of, after having been imported into the United States, a certain narcotic drug then and there being a derivative and preparation of opium, to wit, 20 five-tael tins of opium, and the second count of the indictment charges the defendant, [254—174] that he did "on or about the 18th of October, 1922, at and within the said district, and within the jurisdiction of the court, did knowingly, unlawfully, fraudulently and feloniously purchase, sell, dispense and distribute 20 five-tael tins of opium from packages to which there was not then and there affixed the tax-paid stamp required by law, which said opium then and there was a compound, manufacture, salt, derivative and prep-

aration of opium, and was so purchased, sold, dispensed and distributed.”

There is this further feature of the indictment, before I present the motion. First we have what is purported to be an indictment signed by the foreman of the Grand Jury, merely starting out, “Indictment. Count I. Violation of the Act of February 9, 1909, as amended by the Act approved January 18, 1914, as amended by the Act of May 26, 1922. Count II. Violation of Section 1 of the Act approved December 17, 1914, as amended by Section 1006 of the Revenue Act of 1918, re-enacted by section 1005 of the Revenue Act of 1921. A true bill. James F. Fenwick, Foreman. William T. Carden, United States Attorney.” That purports to be an indictment. Of course there is no charging clause, no finding clause, no recitation as to the empanelment of the grand jury. There follows I imagine what purports to be a secondary indictment. I may say as far as the first part of my motion is concerned it might have been taken up on a motion to quash. The second part of the indictment has count one, in which there is a [255—175] charging clause, “The grand jurors of the United States empaneled and sworn” etc., etc. “present that: Lee Choy on or about the 18th day of October, 1922”— There is no finding of any bill at all so far as the second explanatory indictment is concerned, until after the charging clause that he did on a certain day import, or rather facilitate the transportation of opium after it had been imported.

At the end we merely have the signature of the United States attorney.

The COURT.—Does he allege the date?

Mr. ULRICH.—Alleges the date on which the offense is supposed to be committed. No finding by the grand jury; no finding of any bill at all. I will contend it is not an indictment at all so far as this part of the indictment is concerned. The same is true of count 2.

The COURT.—Let me see the indictment. (Inspects paper.) The foreman does say a true bill.

Mr. ULRICH.—Yes, to that particular part of the indictment, if it is an indictment. If the Court please we move at this time for arrested judgment on the ground there is no true bill of indictment in this cause.

The COURT.—The Court has no power to make judgment at this time.

Mr. ULRICH.—I think it would be proper to make a motion,—if we do not rest, it should be more properly a motion for the discharge of the defendant.

The COURT.—A motion for a directed verdict, you mean? [256—176]

Mr. ULRICH.—No, a motion for discharge of the defendant. A motion for a directed verdict would more properly be made at the close of the case.

The COURT.—The case is now in the hands of the jury,—with regard to what they shall do with the defendant.

Mr. ULRICH.—As I understand it, at the close of the prosecution's case, it would be equivalent

to a civil case motion for nonsuit; that is presented without instructions to the jury. This would correspond, in a criminal case, to a civil motion for nonsuit. In the Circuit Court recently, after consideration, we have decided that it should be presented in a motion for the discharge of the defendant.

The COURT.—That has been a practice in the Circuit Court of Hawaii. I don't know what the proof has been in this Court under such questions arising in the Circuit Court, it would be moved that the Court direct the jury to return a verdict and that the defendant be discharged.

Mr. ULRICH.—On the ground there is no true bill of indictment. If there is no true bill of indictment there is nothing which could properly be brought before the jury at all.

I move at this time, if the Court please, for the quashing of the indictment and dismissal of the defendant on the ground that he is held to answer before this Court and jury on no true bill of indictment. Of course the motion to quash is a motion to dismiss. I don't know whether the Court wants to hear argument on these matters in the presence of the jury or not. Second, [257—177] I further move at this time, if the Court please, for an order of the Court directing this jury to find the defendant not guilty and for the dismissal of the charge against this defendant and discharge thereunder.

The COURT.—Do I understand you ask that the Court should find the defendant not guilty?

Mr. ULRICH.—Yes, your Honor, not guilty on the trial of the charge alleged. It would be more

proper to discharge on the first motion first. I want to get these motions before the Court.

The COURT.—I understand you wish now to argue the motion. There is a rule in some courts this motion should be made in the presence of the jury.

Mr. ULRICH.—I would like to make both these motions now.

The COURT.—I understood you made them.

Mr. ULRICH.—The first motion had to do with the insufficiency of the indictment, the second motion is for the direction of a verdict of not guilty, for the dismissal of the charge and discharge of the defendant on the ground that as to the first count of the indictment there is no evidence of any act committed by this defendant which shows or tends to show that he feloniously received, concealed, bought, sold or facilitated the transportation concealment and sale of any opium after it had been imported into the United States.

As to Count II of the Indictment, on behalf of the defendant I move for direction to the jury the defendant be found not guilty, for the dismissal of the charge [258—178] and the discharge of the defendant hereunder, for the reason that there is no evidence at all proving or tending to prove this defendant had anything to do with any sale or dispensing or distributing or purchasing of opium, with or without the payment of the tax required by the provisions of the Act approved December 17, 1914, as amended by Section

1006 of the Revenue Act of 1918, re-enacted by Section 1005 of the Revenue Act of 1921.

Mr. PATTERSON.—I would like to argue that.

The COURT.—We have just heard of the very sad news, of the death of Judge Vaughan, former Judge of this court, and under the circumstances we will take an adjournment of this case until 9 o'clock Monday morning, out of respect to the memory of Judge Vaughan.

(Adjourned until 9 o'clock A. M., Monday, November 13, 1923.) [259—179]

In the United States District Court, in and for the
Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

Trial (Continued).

On Monday, November 13, 1922, at 9 o'clock A. M., all parties being present as before, the following further proceedings were had and testimony taken, to wit:

(Jury-roll called. Arther E. Davidson absent.)

The COURT.—(To jurors present in box.) Whatever may be said in argument on this motion is not part of the case, you will not consider it, and whatever ruling the Court might make will not be considered.

Mr. ULRICH.—If the Court please, I shall make what I have to say very brief, if the Court please, in connection with these motions. At this time I merely want to urge these points by way of calling to the Court's attention particularly the point as to the sufficiency of the evidence to support the two counts of the indictment.

(Argument.)

The COURT.—I took some trouble to examine the indictment. The same form has been used in this case as in others,—a number of cases extending over a certain period of years. Mere practice or continuation of an [260—180] error of course does not make it right. I think the indictment is substantially correct, and this is fastened together, three leaves. I take it this is one instrument, one document. There is absolutely no reason or purpose whatever of fastening them together and presenting them as one unless it was intended to be one, therefore the motion that the indictment be quashed and the defendant be dismissed is denied.

Mr. ULRICH.—Please note an exception.

The COURT.—An exception will be noted.

Mr. ULRICH.—Taking up Count II.

(Argument.)

The COURT.—I was first impressed with your argument, Mr. Ulrich. It seems to me under the evidence in this case, assuming that the jury will take that view, there is evidence by Mrs. Alapa that it had been delivered to her by the defendant, actually placed upon her person by him, so that being true he did have possession of it, and I suppose opium, like

anything else that is considered valuable, could not be acquired without payment for it. The motion will be denied. There may be no evidence of dispensation but it seems to me I would be bound to hold that the evidence showed possession from which purchase might be inferred.

Mr. ULRICH.—We save an exception.

The COURT.—Exception allowed.

Mr. ULRICH.—I submit next that Count I applies to [261—181] an act committed after the opium had been imported into the United States. There is nothing in the evidence to show that this opium had been imported into the United States.

Mr. PATTERSON.—One of the jurymen is absent. The ruling will have to be made in the presence of the jury.

The COURT.—The ruling likewise should be in the presence of the jury. There is one absent.

(Recess taken from 10:25 A. M. to 10:30 A. M.)

(Jury all present.)

The COURT.—Each of the motions made by counsel for the defendant are denied.

Mr. ULRICH.—Note an exception, your Honor.

The COURT.—Exception allowed.

(Mr. Ulrich, counsel for the defendant, makes statement of defendant's case to the jury.)
[262—182]

DEFENDANT'S CASE.

Testimony of Sui Chin Tai, for Defendant.

SUI CHIN TAI was called and sworn as a witness for the defendant, and testified as follows: (Through the official Chinese Interpreter.)

Direct Examination.

(By Mr. ULRICH.)

Q. What is your name? A. Sui Chin Tai.

Q. Mr. Tai, where do you live?

A. I live on School Street.

Q. You have a store, have you not, in Honolulu?

A. Yes, I have.

Q. Is your store at School?

A. On Maunakea Street.

Q. Maunakea and what?

A. Corner Maunakea and Hotel Street.

Q. It is your residence and home, that is on School and Nuuanu? A. Yes.

Q. How long have you been engaged in business here in Honolulu? A. About four years.

Q. All that time operating this store? A. Yes.

Q. Do you know Mr. Lee Choy?

A. Yes, I know him.

Q. How long have you known him?

A. I have known him for over about 10 years.

[263—183]

Q. What character of dealings, if any, have you had with Mr. Lee Choy, during the past year or so, we will say?

A. I used to buy eggs from Lee Choy.

(Testimony of Sui Chin Tai.)

Q. Buy eggs. Anything else?

A. Bananas, vegetables.

Q. Mr. Chin Tai, do you remember an evening in October when Lee Choy was arrested and taken into the police station, being October 18th. Do you remember that day? A. Yes, I remember.

Q. Now on that day when did you first see Lee Choy?

A. I thought it about after 8 o'clock I saw Lee Choy in the store.

Q. About 8 o'clock? A. Quarter to 9.

Q. That is, he came to your store about a quarter to nine? A. Yes.

Q. And what did he do when he came to your store?

A. He came in my store and asked me if I wanted some more eggs, and at the same time told me he was going down the country, and at the same time asked me if I wanted to go. I said, "Yes."

Q. Who else was in your store when he came there or while he was there that evening?

A. One other man was there in the store, by the name of Chow You Lum.

Q. Who is Choy You Lum?

A. He was working with me. [264—184]

Q. Working for you. Well, after he had come there, a little before 9, as you say, and had asked you to go to the other side of the island with him and get eggs, what did you do and what did he do, if anything, with relation to preparing to go?

A. We went down there, down the country.

(Testimony of Sui Chin Tai.)

Q. How did you go down?

A. Went down in machine,—automobile.

Q. Who drive the automobile?

A. A Chinese boy. I do not know his name. He is outside. (A person is brought to court-room door.)

Q. Is this the Chinese boy that drove you to Kaneohe that evening? A. Yes.

Q. His name is Won Tim. How did you get Won Tim to come and drive you down to the country? A. Lee Choy telephoned to him.

Q. And about what time was it that you left your store with Lee Choy and Won Tim in this automobile to go down to the country that evening?

A. After 9 o'clock that evening.

Q. As near as you can fix it, about how long after?

A. Quarter past 9.

Q. Had you closed your store yet, or were you still open?

A. I did not close the store yet. One of my men stayed in the store. I told him we were going down to the country and I left him in the store.

Q. You left then one of your men in charge of the store. [265—185] What time was that?

A. Chow You Lum.

Q. What time do you close your store in the evening?

A. That depends, sometimes after 9, sometimes 10 o'clock.

Q. When you say you left about 9:15, how do you fix that time? How do you remember that time?

(Testimony of Sui Chin Tai.)

A. We had a clock in the store.

Q. Before you left the store you noticed what time it was? A. Yes.

Q. Going down to the country, how did you sit in the automobile?

A. I was sitting in the back seat with Lee Choy.

Q. And you and Lee Choy were in the back seat and this chauffeur, Won Tim, driving? A. Yes.

Q. In going over the Pali and down to Kaneohe did you stop anywhere, or did you just go right along? A. Going straight down.

Q. Did you drive rapidly or just moderate?

A. Well, we go pretty good rate of speed.

Q. When you got over to Kaneohe where did you go? A. We went to Yim Hoon Wai's place.

Q. Who is Yim Hoon Wai?

A. Well, he is a friend of mine; also a friend of Lee Choy's.

Q. Is he the man who raises chickens and sells eggs and things like that? A. Yes. [266—186]

Q. Now, where is Yim Hoon Wai's place in Kaneohe with reference, for example, to the courthouse over there?

A. I think it is about half a mile away from the courthouse.

Q. You know, or do you know, of a little line of stores just the other side of the courthouse. Is that right,—at Kaneohe there, a lot of Chinese stores?

A. Yes, I know.

Q. With respect to those stores where is Yim Hoon Wai's place? A. No.

(Testimony of Sui Chin Tai.)

Q. What I mean is, is it close to those stores, further down the main road, or do you turn off the main road?

A. Between two stores there is a road, and we went up on that road between two stores.

Q. So that you turn off the main road and go up a little road? A. Yes.

The COURT.—Go towards the sea or towards the mountain? A. Go up towards the sea.

Q. And when you arrived at Yim Hoon Wai's place who did you find there? A. Saw Hoon Wai.

Q. About what time do you think it was when you arrived at Hoon Wai's store?

A. At that time I didn't know what time it was.

Q. Well, when you got there did you go inside in Hoon Wai's house? [267—187]

A. Yes, I went in.

Q. Did Lee Choy go in? A. Lee Choy went in.

Q. Did the driver go in?

A. No, the driver remained on his machine.

Q. Well, what did you do in Hoon Wai's store?

A. When I arrived at his place Lee Choy and I went in his house, we went inside the office and in a little while Yim Hoon Wai called Lee Choy out. When they went out I don't know what they were doing.

Q. Lee Choy went there to get eggs to sell to you, is that right? A. Yes, sir.

Q. How much was he selling these eggs to you for? A. A dollar a dozen.

(Testimony of Sui Chin Tai.)

Q. You don't know anything about how much he was paying for them? A. No, I do not.

Q. How long did you stay at Hoon Wai's place there at Kaneohe?

A. We stayed there, I think, about three-quarters of an hour or one hour.

Q. What were you doing during that three-quarters of an hour, and what were the rest of the men doing?

A. During that three-quarters of an hour I was waiting in Yim Hoon Wai's while Yim Hoon Wai and Lee Choy was engaged in conversation.

Q. Did you see them take eggs, getting chickens?

A. Yes, I did. [268—188]

Q. How many eggs did you get over there in Hoon Wai's store that night? A. 300 eggs.

Q. And how were they packed, in a small box or big box?

A. In a box, a box about that big. (Witness indicates.)

Q. Did you get anything else besides those eggs?

A. Half a dozen chickens.

Q. Half a dozen chickens; and how were the chickens packed?

A. Packed in a box with little holes for chicken heads to stick out from the box.

Q. Now, you and Lee Choy put these things in the automobile, or did you?

A. Lee Choy took them out and put them in the automobile.

Q. Where did he put the eggs?

(Testimony of Sui Chin Tai.)

A. In the machine, back, right in the back seat where we were sitting.

Q. And the chickens that were sticking out of the box.

A. The chickens were right alongside of the driver on the fenders.

Q. The running-boards?

A. Yes, right on the running-boards.

Q. All this time the driver was sitting out in the car, was he? A. Yes.

Q. When—about what time was it that you left Hoon Wai's place at Kaneohe to come back to Honolulu with the chickens and eggs?

A. I don't know what time we left there. I don't know. When [269—189] we reached to my store that was about 11 o'clock, about half-past 11 when we reached in town.

Q. It was about half-past 11 when you got back to your store? A. Yes.

Q. Well, who went back with you from Hoon Wai's store to Kaneohe?

A. Lee Choy was with me.

Q. The same driver? A. The same.

Q. Won Tim. You say that you know what time it was when you got back, it was about 11:30. How do you know that?

A. Well, when I came into my store I looked at the time.

Q. So that you had no opportunity to see the time between the time you left your store and the time you got back? A. No.

(Testimony of Sui Chin Tai.)

Q. Now did you stop anywhere coming back from Kaneohe, or did you go right back from the store? A. Came right down.

Q. And when you got to your store about 11:30 was the man that you had left in the store, in charge of the store, still there, or did he close the place up?

A. He left the store. The store was closed.

Q. When you got back to your store what did you do? A. I opened the store myself.

Q. And what did Lee Choy do?

A. Lee Choy took the eggs and the chickens into my store.

Q. That is carried them in? [270—190]

A. Carried them in.

Q. What did this driver, this Won Tim, do?

A. Lee Choy told the driver he did not need him any more, paid him off.

Q. Paid him off, and the driver left, did he?

A. Yes, after he paid him off he left.

Q. You and Lee Choy went into your store. What did you do in the store after you got in there?

A. He was putting the chicken on the scale, weighed it out, and I was taking all my cash in and putting it in the safe.

Q. How long did you and Lee Choy stay in your store there while he was packing away the chickens and eggs, and you were counting your cash, and one thing and another of that store?

A. I think we stayed there about an hour.

(Testimony of Sui Chin Tai.)

Q. You got there about 11:30. Was it after 12, would you say when you left? A. Yes.

Q. Now what did you do with respect to leaving, when you got ready to leave, as you say sometime after 12 o'clock?

A. Before we left the store we cooked about a dozen eggs and Lee Choy and I ate about a dozen eggs.

Q. After you had this little midnight lunch, what did you do with respect to leaving the store or going any place else?

A. I telephoned to a Chinese Auto Stand and tried to get a machine, was no machine there, and so Lee Choy and I [271—191] went out and got a Japanese machine. Lee Choy and I got in the Japanese machine and went right around Hotel Street and were coming home.

Q. As you were going home. You did not get home?

Mr. PATTERSON.—Just a minute. I submit the question should stand—

Q. You say you got in the Japanese machine, went around and went home. Just what did you do? Did you get home—First, where did you get the Japanese machine after having failed to raise a Chinese machine?

A. Lee Choy telephoned for the machine, but I don't know where he came from.

Q. He came from your store, and got you there?

A. Yes.

Q. You live on Nuuanu and what?

(Testimony of Sui Chin Tai.)

A. I live on School Street on the ewa side.

The COURT.—Do you know the name of the driver?

A. No, I do not.

The COURT.—Some time during the proceedings he ought to be called in and identified.

Q. When you got in the Japanese machine at your store where did you go in the machine?

A. We came along Hotel Street, turned down by the road near the palace grounds there, go right down the waterfront, then up Fort Street.

Q. How far had you gone along Fort? By the way, did you stop anywhere on that road or just go along? A. We stopped at Fort Street.

Q. Fort and what? [272—192]

A. Outside of the Bishop Bank.

Q. Outside of the Bishop Bank?

A. Hawaii Bank.

Q. Near Fort and Merchant Street; is that right?

A. Yes.

Q. I mean when you got out of your store, and took this road down to the waterfront and back, had you stopped anywhere else, anywhere until you got to Fort and Merchant Street? A. No.

Q. And then you got to Fort and Merchant Street. As you were getting to Fort and Merchant Street will you tell the jury what happened?

A. Before we get to Merchant and Fort Street we follow another machine up, and when we get near to Merchant Street we pass this machine,—we passed this machine. I saw McDuffie on the car

(Testimony of Sui Chin Tai.)

and I said, "Hello, Mack," and he said, "Stop" and we stopped there.

Q. You came up from the machine from the back and then you called out, "Hello, Mack."

A. When we stopped our machine on the corner there, he drove his machine and stopped his machine outside of the clothing store.

Q. After driving there on Fort Street how were you sitting in the automobile, where were you sitting?

A. I was sitting in the back seat on the right-hand side.

Q. Where was Lee Choy sitting?

A. He was sitting on the left. I was on the right, and [273—193] Lee Choy was on the left.

Q. And the driver in front? A. Yes.

Q. Well, after you had stopped what happened?

A. I got off, when McDuffie told me to stop I stopped and got off the machine, at the same time McDuffie got off his machine. He came toward my machine. I was walking toward his machine. We met halfway. He asked me what I wanted, if I wanted to see him. I says, "No, I thought you wanted to see me." That is what I told McDuffie.

Q. In the meanwhile what else did you see that happened around there?

A. We pulled our machine a little on the other side of McInerney's store and the revenue officer came and stopped us, put a flashlight into the machine. Then he took Lee Choy out of the machine.

(Testimony of Sui Chin Tai.)

Q. Then what did they do?

A. They took Lee Choy to another machine, they called that woman to identify Lee Choy.

Q. Now, Chin Tai, you stopped there at Fort and Merchant Street and talked to McDuffie; all the time, earlier in the evening when Lee Choy came to your store about 9 o'clock or a little before 9, you left for Kaneohe a little after 9,—between those two times was Lee Choy with you personally all that evening, as you have testified, going over to Kaneohe, coming back again, in your presence?

A. He was with me all that time.

Q. After he was taken back to where this woman was what happened? Did you go down to the police station? [274—194]

A. They put Lee Choy in McDuffie's machine, they drove down to the police station. I was following them behind.

Q. Did you make any effort to procure bail for Lee Choy?

A. I tried to bail him out that evening, but they told me I could not bail him out.

Q. Did you make any effort to do anything else for this woman, by the way of getting her a lawyer or bailing her out? A. No.

Q. Did you have any talk with the woman at all?

A. No, I do not know her.

Q. When did you next see Lee Choy?

A. I saw him next day.

Q. Were you able to get him out on bail then?

(Testimony of Sui Chin Tai.)

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

(Argument.)

The COURT.—I think that has some bearing.

(Argument.)

The COURT.—It would show his interest in Lee Choy at least. Let us get all the facts in the case we can. Objection overruled.

A. I could not get him out the next day.

Q. Do you know when it was that he was finally released, how many days it was after that?

A. I got him out at 12 o'clock; Mr. Brown prepared bonds.

Q. Got him out that day?

A. Got him out Saturday, I think, about 12 o'clock. [275—195]

Q. It was Wednesday when he was arrested?

A. Yes.

Q. You were his bondsman, were you? A. Yes.

Q. How much was the bond?

Mr. PATTERSON.—Objected to on the ground it is incompetent, irrelevant and immaterial.

The COURT.—I do not see that is material. The objection is sustained.

Q. Now, you have told us, have you, Chin Tai, as nearly as you can, everything you and Lee Choy did between 9 o'clock that evening and when you got to the police station. Is that right? A. Yes.

Cross-examination.

(By Mr. PATTERSON.)

Q. You say Lee Choy came to your store about

(Testimony of Sui Chin Tai.)

a quarter to nine that night? A. Yes.

Q. Previous to a quarter to 9 that night of the 18th what had you been doing?

A. I was in the store.

Q. You were in the store. You are sure about that? A. Yes, I am sure.

Q. From 6 o'clock that night then,—from 6 o'clock on the night of the 18th up to the time that Lee Choy arrived at your store you were in the store all the time?

A. Well, I do not stay there. I go in and out.

Q. How far had you been. How far out did you happen to go out on that night, if you went out at all? [276—196]

The COURT.—Between 6 o'clock and the time Lee Choy arrived there?

A. As far as the "Liberty News," around the corner, Sing Moe's store, right outside my store.

Q. You were not more than a block away then, as I understand?

A. From my store to "Liberty News," a little over a block.

Q. You were not over two blocks away?

A. No.

Q. What time did you and Lee Choy arrive on to the police station after you had run on to McDuffie that night?

A. I think that was near 1 o'clock in the morning.

Q. Now, I want you to fix an hour that you can swear positively that it was not later than, that

(Testimony of Sui Chin Tai.)

particular hour that you and Lee Choy and McDuffie went to the police station that night?

A. I did not have a watch in my hand all the time. I think it was about one that time, near one o'clock.

Q. Was it earlier than one o'clock?

A. I could not say because I did not have the watch in my hand.

Q. Are you positive that it was not earlier than half-past 12?

Mr. ULRICH.—Objected to as not material.

The COURT.—I think the cross-examination is proper. Great latitude should be allowed, until he shows he cannot fix the time. He has the right to put this question at least. [277—197]

A. I am positive it was after half-past 12.

Q. You are positive it was later than half-past 12?

A. Yes, I am positive it was after half-past 12.

Q. Then between the hours of 6 P. M. on the 18th day of October, 1922, and half an hour after midnight on that same day, you were not in the police station in Honolulu?

The COURT.—Get that right, between 6 o'clock and 12:30.

A. I was down to the police station half-past 7 that evening. Somebody told me a man was arrested down to the police station. I was going down to bail him out. When I arrived down there there was nobody there.

Q. Just what did you mean when you said a minute ago, when you said you were not two blocks

(Testimony of Sui Chin Tai.)

away from your store after 6 o'clock that night?
Just what did you mean?

A. Well, I did not remember that incident until you called my attention to it.

Q. So you remember now that 7:30 the night of the 18th of October, 1922, you were down to see about bailing a friend out, is that correct?

A. Yes.

Q. Are you positive about that? A. Yes.

Q. Now, after 7:30 that night did you go down to the police station again? A. No.

Q. So now you can testify positively that on the night of the 18th of October, 1922, between the hours of 7:30 P. M. [278—198] and a half an hour after midnight of the same date that you were not near the police station in Honolulu?

Mr. ULRICH.—I do not know what he means by “near.” The question is not very fair. A. No.

Q. During those hours you were not in the police station either, were you?

The COURT.—You mean from 7:30 to 12:30?

Mr. PATTERSON.—Yes.

WITNESS.—No.

Q. Who was this friend you were going to bail out that night?

A. Well, I don't know, when the party telephone to me, told me to go down to the police station and bail a man out; I asked him who was the man arrested and he told me I know the man when I arrive down at the police station.

Q. Did you find the man? A. No, I did not.

(Testimony of Sui Chin Tai.)

Q. There was nobody arrested? A. No.

Q. Did you talk to anybody when you were down there?

A. I came down to the police station as far as the corner there; I came as far as Merchant and Nuuanu Street, and I met a Chinaman by the name of Lum Tip, the one who telephoned to me; he told me there was nobody down there.

Q. Did you go on down to the police station?

A. No, I did not go down to the police station from the corner. [279—199]

Q. Then we will go back again. From the hour of six o'clock on the evening of October 18th, the hour of 6 P. M., up to half an hour after midnight on the same day you were not in the police station?

Mr. ULRICH.—I would not object if he had not gone over it so many times. I object on the ground that it is not proper cross-examination to take this witness over a period of time that was not covered by direct examination.

The COURT.—I think it is proper cross-examination, particularly in view of this last answer. The cross-examination extends through the testing of his credibility as well as material facts. Objection overruled.

Mr. ULRICH.—Exception.

A. No.

Q. Then you were mistaken awhile ago when you said you went down to the police station at 7:30 that night?

A. Well, I did not go in the police station but I passed the police station that evening.

(Testimony of Sui Chin Tai.)

Q. Where is Merchant Street, is that the street that runs in front of the police station? A. Yes.

Q. Do you know Arthur Brown? A. Yes.

Q. Did you ask Arthur Brown to represent this woman back here as her attorney? A. No.

Q. You are positive of that? A. Positive.
[280—200]

Q. What time did you and the defendant leave for Kaneohe that night?

A. We left my store quarter past nine.

Q. And was this a business trip over to Kaneohe?

A. Yes, a business trip, to buy eggs from him.

Q. And you went over there with Lee Choy. What kind of automobile was this?

A. I do not know what kind; I could not say what kind of machine. I know the driver.

Q. Was it a passenger automobile? A. Yes.

Q. Was it a big automobile?

A. Passenger automobile, seven-seated machine.

Q. And you and Lee Choy went by yourselves, you two and the driver? A. Yes.

Q. And you bought 300 eggs at a dollar a dozen from Lee Choy? A. Yes.

Q. And how much did you pay for the chickens?

A. I did not buy the chickens from him; he kept the chickens in the rear of my store and the next day I sold the chickens for him.

Q. How much did you sell them for?

A. I sold for 75¢ a pound for him.

Q. How much did they weigh?

A. Six chickens, weighed 24 pounds.

(Testimony of Sui Chin Tai.)

Q. You are positive about that? [281—201]

A. Yes.

The COURT.—Was this 75¢ a pound for dressed chickens or live chickens? A. Live weight.

Q. Is that the price these chickens generally sell for, 75¢ a pound live weight? A. Yes.

Q. Who did you sell those chickens to?

A. I sold that to my customer. I kept two myself.

Q. You don't know which particular customer you sold it to?

A. Of course I didn't pay much attention to who were they.

Q. Did you and Lee Choy have any other business over in Kaneohe that night? A. Not there.

Q. Do you know whether Lee Choy had any other business or not? A. No.

Q. Do you know how far it is to Kaneohe?

A. No, I do not.

Q. About how far?

A. Well, I don't know exactly how many miles; I think about 10, or 8 miles, I would say.

Q. How many times have you been over at Kaneohe? A. Twice.

Q. Only twice in your lifetime?

A. I went down Yim Hoon Wai's, I believe, but I went down many times before that.

Q. Are you pretty well acquainted? [282—202]

A. I had a rice plantation down at Heeia. Just sold it last year.

(Testimony of Sui Chin Tai.)

Q. How long have you known this Yim Hoon Wai?

A. I have known him about ten years. I knew him when he was in town here.

Q. Are you a very good friend of his?

A. Well, not exactly; we know each other.

Q. Have you ever been interested in business with him? A. No.

Q. Did you ever loan any money to him?

A. No.

Q. Did he ever loan any money to you? A. No.

Q. Did he ever work for you? A. No.

Q. Does he deal with you? A. No.

Q. Any relation of yours? A. No.

Q. How long did you stay over to his house that night? A. I think about an hour.

Q. How much did Lee Choy pay him for the eggs? A. I do not know.

Q. How much did he pay him for the chickens?

A. I do not know.

Q. You didn't have any talk with Lee Choy about that at all? A. I didn't. [283—203]

Q. This night he came down to your store he told you he was going over after your eggs?

A. Yes.

Q. And he asked you if you wanted to go along?

A. Yes.

Q. And you said yes and away you went?

A. Yes.

Q. Now, how long have you known Lee Choy?

A. I have known him about ten years.

(Testimony of Sui Chin Tai.)

Q. Do you know his wife? A. Yes.

Q. Does he know your wife? A. Yes.

Q. Do you visit each other? A. Yes.

Q. Friendly with one another? A. Yes.

Q. What does he do? What is his business?

A. He delivers, goes down to the boat, vegetables down to the boat.

Q. Who does he work for?

A. He is working for Lee Chuck. Lee Chuck is Lee Choy's uncle. Lee Choy is there in that store with his uncle.

Q. After you left your place, after you had returned from Kaneohe, you got in the Japanese automobile, you say? A. Yes.

Q. What is the name of that Japanese?

A. No, I don't know. [284—204]

Q. How much did you have to pay this Chinaman over and back in this automobile?

A. I don't know how much his fare. I didn't pay him. Lee Choy paid him.

Q. You don't know the name of this Japanese?

A. No, I didn't.

Q. Would you know him if you saw him?

A. I am not positive because that night when I arrive in his machine was night-time.

Q. Have you seen him since that time? A. No.

Q. You are positive about that?

A. I am positive.

Q. Where is his stand?

A. I don't know. Lee Choy called him by the telephone.

(Testimony of Sui Chin Tai.)

Q. And when you got in his automobile where did you go?

A. We drove on on Hotel Street, right on the other side of the Palace grounds, then right down to the waterfront, then up to Fort Street.

Q. You went down the waterfront to pier 7, didn't you, and Lee Choy?

A. Yes, we passed pier 7 on our way up.

Q. You know where pier 7 is, don't you?

A. Well, I don't know number 7. We came down on this next street here, called Richard Street, and go right down to the waterfront, right along the waterfront and up Fort Street.

Q. Didn't you go down—you know the road in front of the piers, down there?

A. Well, I know the road opposite the pier but I don't [285—205] know the name of the road.

Q. Didn't you go down the road and turn completely around and go back up town?

Mr. ULRICH.—I don't think the question is intelligible. Do you mean he came around and came back on the same street?

Mr. PATTERSON.—I think it is proper the way it is asked. I asked him if he did not go down and turn around.

The COURT.—You mean at the point he reached?

Mr. ULRICH.—I don't. Does he mean he came back and retraced his steps?

The COURT.—As he drove down he reached a point there. At that point did you not come right back. It may have been in better form. The ob-

(Testimony of Sui Chin Tai.)

jection will be overruled. Mr. Patterson explained that he meant at that particular point.

Q. I mean turn completely around, not to the right or left?

A. No, he did not. He went right straight on the waterfront road and up to Fort Street.

Q. What is your business, Mr. Ching Tai?

A. Running a store.

Q. You are known as a professional bondsman, too, are you not? A. Yes, I am.

Q. You go bonds on most of the opium cases that come up in this court, don't you?

Mr. ULRICH.—I think I will object to it, if the Court please. [286—206]

The COURT.—Objection overruled. We have a right to know all about his business.

A. Yes, they call me, I go on their bonds.

Q. Did you ever bond anybody at the request of Lee Choy? A. No.

Q. Didn't Lee Choy come and see you on the night of the 18th in order to go bonds on people that had been arrested that night?

A. No, I could not—he could not come. He was locked up in the police station. How could he get me?

Q. Before that? A. No.

Q. Were you out riding with Lee Choy before this night? A. Once in awhile.

Q. This is the first time you ever went on any egg purchasing expedition, wasn't it?

A. That is the first time.

(Testimony of Sui Chin Tai.)

Q. Where did you say your store was?

A. Maunakea Street and Hotel.

Q. And where do you live?

A. On School Street, this side of the Insane Asylum.

Q. And how far is that from your store?

A. I think about a mile.

Q. How do you go to and from your house?

A. On School Street, down to Liliha Street.

Q. Where does Lee Choy live?

A. He lives on Kinau Lane on Vineyard Street. [287—207]

Q. Both of these residences are up on the upper mauka side of your store, are they not?

A. Yes.

Q. What did you call this Japanese taxi driver for that night?

A. Well, we tried to get a Chinese automobile that night; we could not get it.

Q. What did you call them for,—any automobile for?

A. Well, I was going to get a machine to take me home.

Q. That is what you wanted a machine for, is it?

A. Yes.

Q. Why didn't you go home?

A. Well, it was very warm that night. We were going out to take a little fresh air.

Q. The freshest air you could find was down towards pier 7, is that correct?

(Testimony of Sui Chin Tai.)

A. Yes, that is all the way down it was fresh air.

Q. Your idea of fresh air in Honolulu is down Richards Street to pier 7 and back up again, up Fort and Merchant, is that the way you go when you go out riding for fresh air?

Mr. ULRICH.—Objected to.

The COURT.—I think it is proper. I will permit the question on cross-examination.

A. Well, I don't.

The COURT.—You found plenty of fresh air up the Pali didn't you?

A. Of course I go any place that I feel like it. [288—208]

Q. You found plenty of fresh air up the Pali, didn't you?

A. We had that fresh air already when we came down from the Pali. No use going back there again.

Q. Is there any fresh air out where you and Lee Choy live, out in that direction?

A. Well, fresh air all around.

Q. Was Lee Choy looking for fresh air, too, this night when he was riding?

Mr. ULRICH.—Objected to. It is perfectly easy to insinuate and make argument by repeating three or four different times insinuations, suggestions, in the manner in which this thing is being done now.

WITNESS.—I am not satisfied you ask me a question like that. I was subpoenaed to come

(Testimony of Sui Chin Tai.)

down here to testify. I was not here to answer questions like that.

The COURT.—As long as the Court holds the question is proper it is your duty to answer it.

A. Yes, there is fresh air, in fact fresh air all around.

The COURT.—Fresh air all around, Mr. Paterson.

(Witness produces subpoena.)

Q. When did you get that subpoena?

A. That was given to me this morning by the officer.

Q. Is that the first subpoena you have gotten in this case? A. Yes.

Q. Were you up here on the other days during the course of this trial? Did you come up here for fresh air on those days? [289—209]

A. No, I was not here for fresh air. I was up here to see Brown. He had a lot of cases up here.

Q. You have been here every day during the course of this trial without a subpoena, haven't you?

Mr. ULRICH.—He has not, if the Court please, any—

The COURT.—There is nothing wrong with that question, Mr. Ulrich.

A. Not every day. Once in awhile I come up here. I have a lot of Chinese to bail out during the last opium cases. I come up here to see whether they come up or not.

(Testimony of Sui Chin Tai.)

Q. You were up here last monday morning when the case was started, wasn't you?

A. Yes, I was.

Q. Was there any opium cases coming up here Monday morning that you were interested in?

A. Yes, Bung Choy's case was coming up that day, but when I come up the case was not ready yet.

Q. So you took a seat in the front row here as an interested spectator, didn't you? A. Yes.

Q. And several times during the progress of this case you have been up here, haven't you?

A. Yes.

Q. On Monday didn't they tell you to stay out of here because you were going to be a witness in this case?

Mr. ULRICH.—I object to this, if the Court please, as improper *redirect* examination.

The COURT.—I think the objection will be sustained. The [290—210] Court made an order applicable to all witnesses.

Q. On this particular night after you had obtained the services of this Japanese driver you drove from your store over to Richards Street,—or over to Hotel Street, down Hotel Street to Richards Street and down Richards Street to the wharf; is that correct? A. Yes.

Q. And from the wharf up to Fort Street and then up Fort Street to Merchant Street?

A. Yes.

Q. And you went no place else with this Japanese driver that night? A. No.

(Testimony of Sui Chin Tai.)

Redirect Examination.

(By Mr. ULRICH.)

Q. When you say you went to the wharf you mean you had any particular wharf in mind? Did you stop at any wharf?

A. No, I did not stop at the wharf, but go right straight on the road right in front of the wharf.

Q. Now, as to being down to the police station earlier in the evening, was it an uncommon thing for you to be called down there by telephone to bail people out at the police station?

A. No, that is not uncommon, because people used to call me up every time.

Recross-examination.

(By Mr. PATTERSON.)

Q. Wasn't you afraid this trip over to Kaneohe might [291—211] interfere with some of your bail-bond business?

Mr. ULRICH.—Objected to—

Mr. PATTERSON.—I will withdraw the question. I will ask the Court for leave to further cross-examine. I think counsel has in his redirect *has* taken up the proposition of this bail-bond business, about being called down. That is why I asked the question.

The COURT.—I will permit the question then:

A. Well, I am not the only bondsman. If they can't get me they can get somebody else.

(Witness excused.)

Testimony of Hoon Wai, for Defendant.

HOON WAI, was called and sworn as a witness for the defendant, and testified as follows: (Through the official Chinese Interpreter.)

Direct Examination.

(By Mr. ULRICH.)

Q. What is your name? A. Hoon Wai.

Q. Where do you live, Mr. Hoon Wai?

A. I live down Kaneohe, Koolou.

Q. What is your business? What do you do down there?

A. I am a butcher, raising pigs and chickens.

Q. Do you know Lee Choy sitting here?

A. Yes.

Q. Do you know Mr. Chin Tai?

A. Yes. [292—212]

Q. How long have you known Lee Choy?

A. I have known Lee Choy about two or three years.

Q. What has been the character of your acquaintance or dealings with Lee Choy during that time?

A. He was,—you know when he, Lee Choy, stayed at Kaneohe he used to come down to my place buy hogs from me, also buy chickens and eggs.

Q. Do you remember the night of October 18th of this year? A. Yes, I remember.

Q. Do you remember seeing Lee Choy on that night?

A. Yes, I know he was out at my place.

(Testimony of Hoon Wai.)

Q. At what time of the night did he get to your place?

A. I think about ten o'clock. I went out that evening and came back about a quarter to ten or ten o'clock when they came.

Q. Where had you been?

A. Went out to store at the same time to buy a little stuff.

Q. Now who was at your store when you came? Did you have a house?

A. I had a butcher-shop. That night when they came they came into my house.

Q. Now, was there anyone else there but you when they arrived?

A. Nobody else but myself.

Q. Now, who came to your store that night about ten o'clock? [293—213]

A. Ching Dai and Lee Choy came to my house, not store.

Q. What did they do or did either of them do when they came to your house?

A. They came and asked me they wanted to buy some eggs or chickens, which they always did.

(12:15 P. M. An adjournment was taken until Tuesday, November 14, 1922, at 9 o'clock A. M.)
[294—214]

(Testimony of Hoon Wai.)

In the District Court of the United States, in and
for the Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

On Tuesday, November 14, 1922, at 9 o'clock A. M.,
all parties being present as before, the following
further proceedings were had and done and testi-
mony taken:

(Jury all present.)

HOON WAI, resumed the stand for further ex-
amination, and testified as follows: (Through the
official Chinese Interpreter.)

Direct Examination (Continued).

(By Mr. ULRICH.)

Q. Yesterday you were testifying about a visit
made to your place by Chin Dai and Lee Choy on
the night of October 18th of this year. How do
you place that date as October 18th?

Mr. PATTERSON.—I object to the question
upon the ground that it calls for a specific date. I
don't remember any where in the evidence where
the witness has voluntarily said this was on the
night of the 18th.

The COURT.—I am not sure whether he stated
that or not. You might ask him now what date of
the month it was. [295—215]

(Testimony of Hoon Wai.)

Q. You have testified about a visit to your place at Kaneohe on a certain night made by Mr. Chin Tai and Mr. Lee Choy on which occasion Lee Choy got some eggs and chickens at your house. What date was that, if you know? A. October 18, 1922.

Q. How do you fix the date as October 18, 1922?

A. Well, I am a business man down there. I put down in my book dates.

Q. Kept a record of this, did you?

A. Yes, I kept a record.

Q. Have you that book with you?

A. Yes, I have.

Mr. PATTERSON.—I object.

(Argument.)

The COURT.—I understand the rule of evidence. I suppose this is a book of accounts. That is only admissible in evidence between parties to the transaction, not between strangers. It is between parties. Here is a case between the United States of America and Lee Choy, strangers to the transaction.

(Argument.)

The COURT.—I did not quite understand what Mr. Ulrich's purpose was.

Mr. ULRICH.—First that he might refer to the memorandum; second, we offer the book in evidence to show that they are records kept in the regular course of business, to test the authenticity of the record. If it is true [296—216] that this man has been making records regularly, contemporaneous with these transactions, it is right that the

(Testimony of Hoon Wai.)

jury should know, as to whether or not they were over there on this particular night.

The COURT.—Of course, I understand you don't object to the book being handed to the witness. It appears there is no necessity of using the book for that purpose. He has already testified to the date. The book may be offered for identification.

Mr. ULRICH.—He testifies the book contained the record that the date showed the transaction taking place on that night.

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial, as a foundation for the introduction of improper evidence, and objected to as incompetent, irrelevant and immaterial for the reason, if your Honor please, that if the question is answered in either way the book is not properly admissible in evidence in this case.

The COURT.—I am inclined, Mr. Ulrich, to take that view. It seems to me if the book is not admissible for one purpose it certainly is not admissible for any other purpose. It cannot be admitted for showing an obligation between strangers. You disclaim any intention of offering it for that purpose.

Mr. ULRICH.—It may be received for identification?

The COURT.—I will permit it to be identified as the book. You may answer that question, "Is this the book?"

WITNESS.—Yes. [297—217]

(Testimony of Hoon Wai.)

Mr. ULRICH.—Now, if the Court please, I will offer the book and take the Court's ruling. I offer a record in evidence, made contemporaneous with the transaction which took place on the night of October 18th.

Mr. PATTERSON.—Alleged to have been made in October 18th. I object to the offer upon the grounds it is incompetent, irrelevant and immaterial.

The COURT.—The objection will be sustained.

Mr. ULRICH.—The book may be marked for identification. We except to the ruling of the Court in refusing to admit the book in evidence.

The COURT.—Exception allowed.

Q. Mr. Hoon Wai, you say that Lee Choy and Chin Tai were at your place on the evening of October 18th. Can you say about how long they were at your place?

A. He stayed there either three-quarters of an hour or one hour.

Q. Tell us how many eggs you sold to Lee Choy that night?

A. I sold three hundred eggs to Lee Choy.

Q. How many chickens? A. Six chickens.

Q. Did Lee Choy pay you for those eggs that night?

A. He gave me fifty dollars; five, ten-dollar bills.

Q. Was that in payment for what you gave him; or was it *selling* an obligation which he had been owing before?

(Testimony of Hoon Wai.)

Mr. PATTERSON.—That is objected to on the ground it is leading. [298—218]

The COURT.—Objection overruled.

A. He owed me some money before. The fifty covered some money before and money that night.

Q. Does it appear from that book you saw a moment ago what that was owing for, the whole fifty dollars?

The COURT.—If that gives the date? If the books show that?

Q. (By the COURT.) Does the book show the debt?

A. The book stated he gave me fifty dollars that night, and he still owe me over ten.

Q. (By the COURT.) What I mean is, it would appear from your book how your account stood? Not the date.

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial, and as referring to something that is not in evidence in this case, and not admissible in this case.

The COURT.—That is what I stated, he should not give the date. The witness has said the fifty dollars was payment on an account incurred before.

Mr. ULRICH.—I want to get it in again. It simply shows the probability and the reasonableness of the evidence that he did go down there.

The COURT.—I think he has shown that by his evidence. The objection will be sustained.

Mr. ULRICH.—We will note an exception.

(Testimony of Hoon Wai.)

Do I understand the Court will not allow evidence on that?

The COURT.—He has stated he owed him something before [299—219] going down there that evening, this fifty dollars was full payment of that and partial payment on the other, leaving a balance still due of ten dollars.

Q. As near as you can remember, Mr. Wai, when was it that Chin Tai and Lee Choy left that place that night to come back to Honolulu?

A. They left my place after 10 o'clock.

Q. Well, about what time did you say they got to your place?

A. They were at my place either a quarter to ten or 10 minutes to ten.

Q. You testified they stayed there one-half or three-quarters of an hour. Did I understand the witness to say they arrived at the place a quarter to ten?

A. A quarter to ten or ten minutes to ten.

Q. They stayed there three-quarters of an hour or an hour? A. Yes.

Q. Bearing in mind they stayed there from three-quarters of an hour to an hour, when you say 10 o'clock is the time they left, can't you fix that a little more definitely?

Mr. PATTERSON.—Objected to as leading. The witness testified as to what time they left.

The COURT.—I will permit the question. Answer the question.

(Testimony of Hoon Wai.)

A. I think it was about 5 minutes to 11 they left my place.

The COURT.—Did you have a clock?

A. Yes, I have a clock in my house, but I didn't have [300—220] a watch in my pocket.

Q. And that is all you know about Chin Tai and Lee Choy on the night of October the 18th?

A. Yes, sir:

Q. How long did you say you had been selling chickens and eggs and pork over there at Kaneohe?

A. Eleven years.

Cross-examination.

(By Mr. PATTERSON.)

Q. Now, you testified it was five minutes to 11 when the defendant and Chin Tai left your place. Are you pretty sure about that time?

A. Yes, I am sure.

Q. Did you look up to the clock as they were leaving?

A. Right after they left I went in the parlor to look at the time before I locked up my door to go to bed.

Q. Do you remember looking at the time that night? A. Yes.

Q. When you arrived at the parlor and looked at the time what time did the clock say?

(Conversation between witness and Interpreter in Chinese.)

The INTERPRETER.—I asked him when he went to the parlor and when he looked at the time—

(Testimony of Hoon Wai.)

The COURT.—Tell him to answer the question. We do not want him talking about other matters.

A. A few minutes to 11.

Q. Was it 10 minutes or 15 or 3 or 2 or 1 minute?

A. Four minutes to 11.

Q. You are sure about that? [301—221]

A. Yes, I am sure.

Q. You are sure it was not three or five; just exactly four minutes to 11? A. Four minutes.

Q. Did you look at the clock when Chin Tai and Lee Choy arrived?

A. Yes, I looked at the time.

Mr. ULRICH.—I have to challenge the interpretation on the question just before that. My Chinese adviser said the witness said four minutes but it was only after the suggestion of four minutes from the interpreter that it came out four minutes. The witness testified a “few minutes,” not “four minutes.”

The INTERPRETER.—He said a few minutes at first, then after Mr. Patterson—

The COURT.—Ask him again.

Mr. PATTERSON.—I will reframe the question. It was exactly four minutes to 11 when you looked at the clock after Chin Tai and Lee Choy had left, wasn't it?

The COURT.—Answer the question.

A. Exactly four minutes.

Q. You are sure it was not three and you are sure it was not five? A. Four minutes to 11.

(Testimony of Hoon Wai.)

Q. Would you be willing to concede it might have been four minutes and a half or three minutes and a half to eleven?

A. No, the time was four minutes to 11. [302—222]

Mr. PATTERSON.—I think he is pretty certain on that point, your Honor. The Interpreter was correct before.

Q. So you looked at the clock when they came in that night, too? A. Yes.

Q. And what time was it then?

A. A quarter past 9 or 20 minutes past 9 when they arrived my place. I didn't look at the time that time.

Q. It was a quarter past 9 or 20 minutes past 9. When was the time that you looked at the clock then?

A. When they arrived my place, sitting on the chair, then I went inside get tea, and when I gave them tea to drink that is the time I looked at the time.

Q. And what was the time then?

A. About a quarter past 9.

Q. About a quarter past 9, is that correct?

A. Quarter past 9.

Q. That is when Chin Tai and Lee Choy arrived at your place? A. Yes.

Q. They were in the house and you went into your room and looked at the clock and said a quarter past 9?

A. They were sitting on the veranda, I went in the house and looked at the time.

(Testimony of Hoon Wai.)

The COURT.—Why did you go in the house and look at the time?

A. Well, I have a family living in the house with me. I am on the veranda. I have a room on the veranda. [303—223]

The COURT.—Why did you go inside to see what time it was?

A. When I went inside to bring the tea-pot out and at the same time I looked at the time.

Q. And you said it was 15 or 20 minutes after 9. Are you positive now as to the exact time that it was?

A. Yes, I am positive that it was a quarter past 9, because I have another clock in the kitchen that shows a quarter past 9.

Q. So you looked at the two clocks then?

A. I looked at both clocks; one clock is a few minutes faster than the other.

Q. You are absolutely positive about that?

A. Yes.

Q. This was on the night of the 18th of October?

A. Yes.

Q. Your clocks are the same as the clocks in Honolulu?

A. I kept my time from the telephone operator.

Q. You keep your clocks pretty close to the right time, do you? A. Yes.

Q. Now what did you mean a minute ago when you said that Lee Choy and Chin Tai arrived at your house at a quarter to 9 or 10 o'clock on the night of the 18th of October,—I mean a quarter to 10 or 10 o'clock?

(Testimony of Hoon Wai.)

A. What do you mean? No, I didn't state that.

Q. In answer to Mr. Ulrich's question you testified that Chin Tai and Lee Choy arrived at your house a quarter to ten [304—224] or ten o'clock? Were you testifying falsely then or are you testifying falsely now?

A. I didn't make that statement. I told when they left my house, near that time.

Q. When they left your house then it was a quarter to 9 or ten o'clock, is that right? A quarter to ten or ten o'clock?

A. They left my place near 11 o'clock.

Q. Well you testified a minute ago to that. You testified awhile ago when Mr. Ulrich, the defendant's attorney, was asking you some questions, that it was a quarter to ten or ten o'clock when these people arrived at your house. Now, was that correct? A. Yes, that is correct.

Q. They arrived there then at your house about a quarter to ten or ten o'clock?

A. Oh, yes; arrived at my place after 10 o'clock. When they left my place near 11 o'clock.

Q. They arrived at your place after 10 o'clock?

A. They arrived my place a quarter past 10, and left my place near 11 o'clock.

Q. You are sure it was 15 minutes after ten?

A. Yes.

Q. That is when they arrived then? A. Yes.

Q. What did you mean when you said a moment ago that they arrived at your place at a quarter after 9 o'clock?

(Testimony of Hoon Wai.)

The COURT.—Or 20 minutes. [305—225]

Q. Or 20 minutes after 9?

A. I misunderstood that time. I misunderstood the question that time.

Q. Didn't you hear me repeat that question about four or five times?

A. I could not hear very good.

The COURT.—You now say you are sure he arrived at your place at a quarter past 10, is that correct? A. Yes.

The COURT.—And that he stayed at your place about three-quarters of an hour, or one hour, is that correct? A. Yes.

Q. You are positive of that now? A. Yes.

Q. Did you have any trouble hearing the interpreter asking these questions a minute ago?

A. Before that I misunderstood him; he misunderstood me; now he understands me.

The COURT.—You say you are sure they arrived at your place a quarter past 10 and stayed there three quarters of an hour or an hour. Are you also sure they left there at 4 minutes of 11?

A. They left my place four minutes or five minutes, about near that time.

Q. Did you put these times down in your account-book? A. No, I did not.

Q. You remember this distinctly from your memory? A. Yes, I marked out my times.

Q. When you were testifying about their leaving a minute [306—226] ago, a little while ago, you made the direct statement to your attorney that they

(Testimony of Hoon Wai.)

arrived at 9:45 or 10 o'clock. What did you mean by that?

A. Well, what I said before I have forgot of already.

Q. You have forgotten now about it?

A. Well, afterwards everything you asked me is correct.

Q. Now, which is correct, tell us again?

A. In answering the questions of my direct examination some are right, some are wrong; answering your questions they are correct.

Q. All the questions you have answered to me are correct. Why did you answer the questions wrongly when your attorney asked you?

A. Well, I make mistake of the time. I misunderstood.

Q. You may be mistaken altogether about this time, isn't that correct?

A. No, I am positive this last time I fixed it.

Q. Didn't Lee Choy check your memory up in regard to the time that he arrived there?

A. No, he did not.

Q. And from the night of October 18th up to the time you became a witness in taking the witness-stand this morning, up to the time you took the witness-stand in this case, you have never said anything about the time that these people arrived and departed to anyone, is that correct? A. No.

Q. This is the first time it has ever been mentioned? A. Yes. [307—227]

(Testimony of Hoon Wai.)

Q. You are positive Lee Choy has never said anything about it? A. No.

Q. Never talked about it with Mr. Ulrich?

A. No.

Q. Never talked about it with Mr. J. Donovan Flint?

A. He questioned me, told me to tell the truth. I told the truth.

Q. He told you to tell the truth. Did he come over to your house over there?

A. Why, I went down to his office. He sent for me.

Q. Since I have been talking to you you have been telling the truth about the time, is that correct?

A. Yes, sir.

Q. Do you remember you told me about the two clocks you had over in your house? A. Yes.

Q. And do you remember you told me that you talked to the telephone operator about them, that you got the time from the telephone operator?

A. Yes.

Q. You remember that. And do you remember the time when you went off the porch to get tea for Chin Tai and Lee Choy? A. Yes.

Q. And you remember telling me it was 15 minutes after 9 o'clock when you— Do you remember telling me that by these two clocks you looked at at that time it was 15 or 20 minutes after 9 when you went in after this tea? [308—228]

A. No, quarter past ten.

Q. You didn't say anything about 9 o'clock?

(Testimony of Hoon Wai.)

A. No, I did not. Well, maybe I did state it, if I did state it it is my mistake.

Q. When you told Mr. Ulrich that they arrived at 9:45 or 10 o'clock that was not true, was it?

Mr. ULRICH.—This matter has been gone into three or four times.

The COURT.—I think his attention has been called to that sufficiently.

Q. Now, how many acres of land do you own at Kaneohe?

A. I have seven acres altogether, four different places.

Q. You have seven acres altogether?

A. Yes, with the exception of my house.

Q. Are you a butcher by trade? A. Yes.

Q. Do you raise pigs?

A. Yes, raise pigs, have pig-pens there.

Q. That is your chief business, raising pigs for the butcher-shop?

A. Raising chickens, planting vegetables and also rice field.

Q. Now on these seven acres how many acres are there in the rice field.

A. I use over three acres, bananas and rice field.

Q. How much in vegetables?

A. Well, this year a little over an acre planted in rice, right after planted rice planted vegetables, and after that planted rice. [309—229]

Q. Then there is a little over three acres that you use for that purpose?

A. About one acre, vegetables and rice.

(Testimony of Hoon Wai.)

Q. About $2\frac{1}{2}$ acres that is continually planted in rice and bananas, is that right?

A. Two acres planted in bananas and papaias.

Q. How many pigs do you have over there?

A. I had about 24 or 25 more left, some die before.

Q. Do you buy meat from the outside people for your butcher-shop? A. No, no meat, just pork.

Q. Do you buy pork from outside people?

A. No.

Q. You just sell pork that you raise, is that correct?

A. I sell some of my pigs, and sometimes I bought pigs from other peoples.

Q. Do you buy any pigs to furnish to the Honolulu markets?

A. I sold some pigs to C. Q. Yee Hop, worth about over a thousand dollars.

Q. Do you buy pigs and other produce from your neighbors and other farmers over there and sell it to people in Honolulu? A. Yes.

Q. You do that, do you?

A. Yes, bought and sold.

Q. How long has it been since you bought any produce from your neighbors to sell in Honolulu?

A. It was about a year or more.

Q. And for the past year you have bought no produce from [310—230] any of your neighbors to sell to any one in Honolulu?

A. Since then I didn't bought any to bring in

(Testimony of Hoon Wai.)

town, or sell it; I bought it to keep it out at my place.

Q. How many chickens have you on this place?

A. I had 130 chickens raised at the pig pens, and I had about 60 or 70 at my home.

Q. How much did Lee Choy pay you for these eggs that he got from you there?

A. I sold to him for twenty for one dollar.

Q. Twenty for one dollar, is that correct?

A. Yes.

Q. How much did you get for the 300 eggs?

A. \$15 for 300 eggs.

Q. How much did he pay you for the chickens?

A. He paid me 60¢ a pound.

Q. Did you weigh the chickens over there before you left?

A. No, I didn't weigh it out to my place, I told him to weigh it in town.

The COURT.—How were you able to make a charge for the chickens on your book if you didn't know how much they weighed?

A. I came out the 3d day and asked Lee Choy and he told me the weight of the chickens.

Q. You came out the 3d day?

A. The 2d or 3d day I came out in town.

Q. You mean by that the 20th or 21st, is that correct?

A. On the 20th, one day afterwards, on the 20th.

Q. It was not the next day after the night they were over there, it was the second day, is that correct? [311—231] A. The second day.

(Testimony of Hoon Wai.)

Q. You are positive about that? A. Yes.

Q. And that was on the 20th day of October that you came into town?

A. I do not remember the date. When I came in town here I didn't see Lee Choy.

The INTERPRETER.—I told him that was not the answer to the question, it was what date did he come in town.

The COURT.—Always get what he says; we will hear it nevertheless. So in interpreting give us all he says. It is not for the Interpreter to determine what is material and what is not.

Q. Tell the witness to go ahead and tell the story.

The COURT.—When it goes to great length you might stop him for the purpose of interpreting what he has said. The Interpreter is not to determine what is material and what is immaterial.

Q. So the second day after Lee Choy and Chin Tai were over to your house you came over to Honolulu? A. I did not come the second day.

Q. What day did you come?

A. I did not remember the date I came to town here; when I came in town I asked Lee Choy how much the weight, how many pounds them chickens is, and he paid me the price of my chickens.

Q. Now, a minute ago you testified that you came in on the second day. Is that true or not?

A. No, I did not come on the second day; it was a few [312—232] days after I come to town.

Q. What did you mean awhile ago when you said it was on the second day?

(Testimony of Hoon Wai.)

A. The next day I was busy, I could not come in town. At the same time I forget.

Q. The next day you were busy and could not come to town, is that correct? A. No.

Q. Was it the day after that that you came to town?

A. The next Monday I came; it was next Monday I came in town.

The COURT.—What day of the week was it that Lee Choy and Chin Dai were at your place?

A. They came to my place Wednesday evening.

The COURT.—The following Monday you came to town to see about your chickens?

A. Yes, Monday I came in town.

Q. What did you mean a minute ago when you said it was the second day that you came into town?

A. Well, I make a mistake. I did not come in town the next day.

Q. You are positive about that now?

A. Yes, I am positive that I did not come in town?

Q. What is your reason for making that statement then?

Mr. ULRICH.—I object. He has asked him what he meant by saying it.

The COURT.—I suppose he has no reason for it. I think the objection will be sustained. There is not anyone I suppose who will make a mistake on purpose. [313—233]

(Testimony of Hoon Wai.)

Q. The following Monday you came in town then, was it? A. Yes.

Q. And what date was that?

A. Monday was on the 22d.

Q. What time did you leave Kaneohe that day?

A. Left the place 7 o'clock.

Q. In the morning or the evening?

A. In the morning.

Mr. ULRICH.—I do not see what possible object can be gained by taking him into town on Monday, —it is after this thing all happened, through the various wanderings in town that day.

The COURT.—It is not cross-examination.

Mr. PATTERSON.—It is offered for the purpose of testing the credibility of the witness. He has testified two days, then he realizes Lee Choy was in jail and he changes it.

(Argument.)

The COURT.—If he does not remember he can just say that; if he undertakes to answer, give the date, and then changes it, it opens it up. It is proper there should be a limit to it. I was a little bit inclined to feel that the prosecuting attorney had about reached that limit. If he said he could not remember then it would be different.

(Argument.)

The COURT.—What is your purpose, Mr. Patterson?

Mr. PATTERSON.—This man testifies first he came over [314—234] here on the 2d day. Now, may it please the Court, I want to test the credi-

(Testimony of Hoon Wai.)

bility of this witness as to exactly what he did, when he came to town, when he did see Lee Choy and just what happened.

The COURT.—He says Monday the 22d.

(Argument.)

The COURT.—I do not see where it is material, Mr. Patterson. I do not see where the hour was material.

(Argument.) (Question withdrawn.)

Q. Calling your attention to the fact that Monday was the 23d day of October and Sunday was the 22d, now which day was it when you came over here? A. On the 23d day, Monday.

Q. 23d, Monday the 23d. You are sure of that, are you?

A. Yes, I am sure of that. Sunday I could not, I had to kill a pig down there, I could not come in town.

Q. Is that the day you weighed out the chickens?

A. No, I did not weigh out the chickens. I told them to weigh it out for me.

Q. How much did the chickens weigh?

A. Twenty-four pounds.

Q. Now how did you come over to Honolulu that day? A. Came over on a machine.

Mr. ULRICH.—Objected to—

The COURT.—I think it is preliminary.

Q. Who with.

A. I came over on Asoyo's automobile.

Q. Now, did you see Lee Choy when you were

(Testimony of Hoon Wai.)

over here on Monday, the 23d day of October?
[315—235]

A. I came into Chin Tai's store. Lee Choy was not there. I asked the bookkeeper in there to tell me, and he told me 24 pounds my chickens weighed.

Q. Did you see Lee Choy that day?

A. No, I did not.

Q. Between the 18th of October and the 23d day of October did you see Lee Choy or Chin Tai?

A. No.

Q. You didn't see any of them? A. No.

Q. How long after the 18th day of October was it that you heard that Lee Choy had been arrested?

A. A few days after that I heard him.

Q. Who told you?

A. Some of those people over in town here went out to Kaneohe. I overheard the conversation.

The COURT.—You did not hear about it at Chin Tai's store on the day you came in, Monday the 23d? No one spoke of it?

A. No, I did not hear anybody say anything. I just asked him how many pounds my chickens weighed and went off.

The COURT.—So you did not hear of the arrest of the defendant until after you returned to Kaneohe, that is after the 23d? Is that correct. Did you hear that after you returned from here back to Kaneohe?

A. Yes, after I returned there I heard it.

Q. About what day was it that you heard that Lee Choy [316—236] had been arrested?

(Testimony of Hoon Wai.)

A. Well, I heard people down there talking about Lee Choy's arrest a few days afterwards.

Q. About what time, was it after or before the 23d day of October? A. After the 23d of October.

Q. And how long did you stay in Chin Tai's store that day?

A. I came in town, was on my way to some place to buy something, I passed Chin Tai's store and at the same time I asked the bookkeeper in there how much my chickens weighed and he told me 24 pounds, and I walked ahead.

Q. You did not see Chin Tai that day? A. No.

Q. Does Chin Tai ever come over in your place at Kaneohe?

A. He came down my place afterwards once; I was not home.

Q. Afterwards,—after what?

A. After I heard Lee Choy was arrested he came over.

Q. Is that the only time he was ever over to your house?

A. That is the only time after Lee Choy was arrested he was at my place.

Q. He was there one time then?

Mr. ULRICH.—He said the only time after he was arrested.

Q. Isn't it a fact he was—(Question withdrawn). Is it not a fact that he was only over to your place one time?

A. In fact I did not see him afterward. I only

(Testimony of Hoon Wai.)

know that he came over to my place once, when he bought chicken and chicken eggs. [317—237]

Q. That is the only time you know of him coming over? A. Yes.

Q. Was there anyone with Ching Tai and Lee Choy that night?

A. Only them two came in my house except the driver, the driver sitting in the machine outside.

Q. Do you know this driver? A. Yes, I do.

Q. Is he Chinese? A. Yes.

Q. Good friend of yours? A. No.

Q. Has he ever been in your house?

A. Yes, he was at my place before with Lee Choy.

Q. When he and Lee Choy were out there together did he come in the house?

A. No, he did not come in the house, sitting in the machine, sitting on the veranda.

Q. This night he was sitting out in the automobile? A. Yes.

Q. How far is your house from the road?

A. The road right outside my gate.

Q. And where does he live, this driver?

A. I don't know.

Q. Does he live in Honolulu or Kaneohe?

A. I know he don't stay down in Kaneohe.

Q. Now you say this night when Lee Choy was over there he gave you \$50, is that correct?

A. Yes. [318—238]

Q. Fifty dollars, and that was for the things he had purchased that night and things he had purchased before, is that correct? A. Yes.

(Testimony of Hoon Wai.)

Q. How much did you—How much did he owe you after he paid you this fifty dollars?

A. I had that in my book, he owed me over ten dollars, nearer twenty dollars.

Q. He owed you over ten dollars, nearer twenty dollars. Did you mark it down in the book that night? A. Yes, I did.

Q. Put it down in the book, 300 eggs for \$15, you put that down? A. Yes.

Q. Did you put anything down about the chickens? A. Yes.

Q. Did you put down about the chickens?

A. 24 pounds of chickens, \$14.40.

The COURT.—Did you write it down?

A. Yes. I may not put it the same night, the same time I received the money from him.

Q. That was the night that Chin Tai and Lee Choy were over there?

A. The chickens I did not put down that night. I only put down the eggs, not the chickens, because I did not know how much a pound those chickens were.

Q. You did not put down about the *the* pounds of chicken. When did you put the \$14.40 down?
[319—239]

A. That was when I came in town here. I asked the bookkeeper in the store there, and he told me 24 pounds, so I went down there, went home, and put it down in the book.

Q. Now, that night Chin Tai and Lee Choy came into your house didn't they?

(Testimony of Hoon Wai.)

A. Came into my veranda.

Q. You gave them some tea?

A. Yes, I offered them three the drink.

Q. Where did they sit?

A. They sit in a room on the porch.

Q. Is there a light there?

A. Yes, an electric light.

Q. Did they sit in chairs? A. Along a bench.

Q. The two of them came in and sat down on the bench?

A. Yes, they were sitting on the bench, and I have a chair too, besides the bench.

Q. Did you sit on the chair?

A. I sit on the chair, close to the table.

Q. You went out to get the tea by yourself?

A. Yes, I went in to get the tea.

Q. And did you—You brought the tea back by yourself? A. I left it there after awhile.

(Recess until 10:45.)

Q. So Lee Choy and Chin Tai were out on the porch when you left there and when you brought the tea back? A. Yes. [320—240]

Q. And you came out and sat down in the chair and you all three talked?

A. I came out and poured the tea in the cup and offered them the drink. .

Q. Then what did you do?

A. I asked them what they came in for, and they said they wanted to buy chickens and chicken eggs.

Q. Then what happened?

(Testimony of Hoon Wai.)

A. And afterwards Lee Choy and I went up to the house.

Q. Was it Chin Tai that said about buying the chickens and eggs? A. No, Lee Choy.

Q. Did he tell you the price that time?

A. Well, he know the price; I sell him before.

Q. You sold Chin Tai before?

A. Sold to Lee Choy.

Q. Where did he give you the fifty dollars?

A. Just before he left the porch; he pulled the money out of his pocket and gave to me.

The COURT.—In the presence of Chin Tai?

A. Chin Tai was on the porch and when I gave the money to Lee Choy, Lee Choy was on the veranda with me.

Q. Chin Tai was on the porch, you say?

A. There was a room on the porch.

Q. Did he see Lee Choy give you the money?

A. Well, I don't know whether he saw or not, he was sitting in the room on the porch.

Q. Did you and Lee Choy go out together? [321—241]

A. Lee Choy and I was on the veranda counting the eggs.

Q. Was Chin Tai there?

A. He was on the porch smoking.

Q. How far from you was Chin Tai?

A. Well, very close, he was in the room, in the porch there. I was outside. There was a door.

Q. Door open?

(Testimony of Hoon Wai.)

A. Well, swinging doors, close, swinging in and out.

Q. And you talked to Chin Tai?

A. No, I did not, he was in the porch himself.

Q. Could you hear,—the place where Chin Tai was sitting, could he hear you and Lee Choy talking outside?

A. Oh, yes; he was right close to the porch.

Q. Did you or Lee Choy, either one, carry on any conversation with Chin Tai, make any remarks or anything to him during the time you were on the veranda and he was on this porch?

A. No, I only talked to Lee Choy about the chickens and the chicken eggs.

Q. How long—Did you go any place else with Lee Choy?

A. No. I went outside myself to get the chickens.

Q. Did you have them in a sack? A. Yes.

Q. You had them in a sack?

A. Yes, I put the chickens in a bag, cut a little hole through it, the chicken heads stuck out. [322—242]

Q. You caught the chickens after they arrived?

A. Yes, when they asked me for chickens I went and caught the chickens in the chicken-coop.

Q. Then you went into the house and went out to the machine with them when they got ready to go?

A. No, I did not go outside on the machine with them, I was standing on the veranda to bid them

(Testimony of Hoon Wai.)

good-bye. Lee Choy took the chickens out himself.

Q. Who was in the automobile?

A. The automobile,—the driver.

Q. Did the automobile driver come to the house after the chickens? A. No.

Q. You did not give him any tea that night?

A. I offered it to him but he did not come.

Q. Did you have anything to eat that night?

A. No.

Q. Then as Lee Choy was leaving he slipped you this fifty dollars, is that correct?

A. After he counted the eggs he gave me fifty dollars, and he told me we would fix that up later on.

Q. You put it down in the book about the 300 eggs, is that correct?

A. 300 eggs, and six chickens, and I did not put down the pounds.

Q. You did not put down the amount of pounds. Did you put down receiving the fifty dollars?

A. Yes, I did. [323—243]

Q. You didn't make a memorandum about the chickens then, did you?

A. Well, I put down the chickens but I did not put down the pounds.

Q. Did you put down the balance that he owed you?

A. Well, I put down that afterwards, after I came down in town here, and Chin Tai's book-keeper told me so many pounds of chicken, so I went home and entered in the book.

(Testimony of Hoon Wai.)

Q. How long have you lived in the Hawaiian Islands? A. Lived here 32 years.

Q. Have you been back to China?

A. Yes, I went back to China a year before last.

Q. When did you get home?

A. I came back here last year, November. Go to China the year before last.

Q. You got back here just about a year ago?

A. Just about a year.

Q. You mean that it was a year ago that you arrived in the Hawaiian Islands on your way back from China? A. Yes.

Q. And when did you leave for China?

A. I don't remember when I left for China. I don't know how long that was, but I do remember when I came back here last year.

(Witness excused.) [324—244]

Testimony of Mrs. Tom Lee See, for Defendant.

Mrs. TOM LEE SEE was called and sworn as a witness for the defendant, and testified as follows: (Through the official Chinese interpreter.)

Direct Examination.

(By Mr. ULRICH.)

Q. What is your name? A. Mrs. Tom Lee See.

Q. Where do you live?

A. I live on Kukui Street.

Q. Whereabouts on Kukui Street?

A. At Athletic Park.

Q. How long have you lived there?

A. I stayed there since September.

(Testimony of Mrs. Tom Lee See.)

Q. You started to live there beginning with the month of September, the 1st of September?

A. Séptember 1st or 2d, two or three days, took us two or three days to move in there.

Q. What does your husband do, Mrs. Lee See?

A. At the present time he is not doing anything, before that he was running a store.

Q. How long since he has stopped running the store? A. Since September.

Q. The same time you moved into your present home? A. Yes.

Q. What is your husband's name?

A. Tom Leong.

Q. What kind of a store had your husband run?

A. Cigars, soda-water, and post-cards.

Q. Where was it? [325—245]

A. Hotel Street.

Q. Whereabouts on Hotel Street?

A. Hotel near Nuuanu.

Q. Between Fort and Nuuanu or on the other side of Nuuanu?

A. Right next to the drug-store there on the corner.

Q. Is it Waikiki of Nuuanu Street or on the other side of the street?

A. Waikiki side of Nuuanu Street.

Q. How long did your husband run that store?

A. Been running that store 7 or 8 years.

Q. Did you work with your husband in the store there? A. Yes.

Q. And wait on customers who would come in?

(Testimony of Mrs. Tom Lee See.)

A. Yes.

Q. How many children have you, Mrs. Lee See?

A. Eight.

Q. This, I take it, is the youngest. How old is this one? (Referring to child held by mother.)

A. A little over three months old.

Q. Did you ever see or know this Chinese man sitting here on this side of the far table, Mr. Lee Choy?

A. Yes, I knew him when I was running the store; he used to come in the store and buy something.

Q. Did you know him otherwise than as someone who had come in the store to buy things from you?

A. No.

The COURT.—Did you know his name?

Q. Did you, before this case arose, did you know his name? [326—246]

A. No, I didn't know his name.

Q. I will ask you, Mrs. Lee See, was he ever at any time at your house?

A. No, he don't know where I live.

Q. He never visited you at any time at your home? A. No.

Q. Do you know anything about his family or where he lives? A. No, I do not.

Q. Now, on a certain night in last month, the month of October, were you visited by certain officers who made a search of your house?

A. Yes, there was.

(Testimony of Mrs. Tom Lee See.)

Q. Do you remember what night that was, or do you just remember it as an occurrence sometime?

A. I think it was on the 18th, on Wednesday.

Q. Now on that night, at about what time was it, as near as you can remember, that these officers came to your house?

A. I think it was after 11 o'clock, between 11 and 12; I went to bed after 10 o'clock.

Q. Were you in bed when they got there?

A. Yes, I was in bed.

Q. I will ask you to be more specific in that question, whether or not on that night you saw Lee Choy anywhere, or whether or not he was at your house? A. No.

Q. By Lee Choy I mean this Chinese here (indicating the defendant). [327—247] A. No.

Q. When did you first know that his name was Lee Choy?

A. Just lately, I know his name, because I have seen him several times.

Q. Now, when these officers came to your house, describe as nearly as you can tell us just what happened.

A. When the officer arrived my house and knocked at my door I got out and opened the door, and showed the badge, and they came in the house and I asked them what they want and at the same time they want to search my place, and after a while there was a white woman came in.

Q. Do you remember who those officers were, to know them if you saw them?

(Testimony of Mrs. Tom Lee See.)

A. Well, I don't know, I know a big man.

Q. McDuffie, do you know him?

A. I think it was Stevenson, a big man.

Q. Any other man?

A. Several others beside him. I did not count how many of them.

Q. Did you know who any of the others were beside this big man? A. No.

Q. They went through your house and searched it, as I understand it?

A. Yes. They searched my place, and after that the white woman came inside, came in my bed and looked in the bed and some of the officers asked this woman, "Is this [328—248] the one, this the one?" and she says, "No."

Q. Now, when you say, "This the one, is this the one?" to whom do you refer, people in your house?

A. At first the officer asked me if I know this lady, this white lady, and I says, "No" and then he went in my bedroom and asked her "Is this the one, is this the one," referring to my children, "Is this the one?" and she says, "No" and then they went out.

Q. What children did you have in there?

A. My oldest child,—big child in there, some smaller ones; they picked up the two big children.

Q. Boys or girls? A. Boys.

Q. How old is your oldest son?

A. The big one is 20 years old.

Q. And the son 20 years old was in bed?

A. Yes.

(Testimony of Mrs. Tom Lee See.)

Q. He is the one they pointed to and asked, "Is this the one?" A. Yes.

Q. Was there any other son—how old is the other son? A. The other one is 19 years old.

Q. Did they point to him also?

A. Yes, they asked the woman, "Is that the boy?" and she says, "No" and the boy was sleeping.

Q. You say that they asked you if you had ever seen or knew this woman and you said no. Did they say anything to the woman in your presence that you could hear as to [329—249] whether or not she knew him or knew you?

A. The woman heard what the officers asked me, and she was standing right in the front of me.

Q. What I mean is did you hear, or was there anything that you could understand that was said to the woman by way of questioning her as to whether or not she recognized you?

A. Yes, she asked me if I knew this woman, and I told her no.

Q. I want to know if the woman said anything by the way of indicating any recognition of you?

A. No, did not say anything.

Q. Is this the woman you refer to, this second woman sitting here?

A. I don't know. I could not recognize her.

Q. You could not?

A. Well, I am not sure, they came in a little while and they went out.

Q. You say you could not be sure, you could not recognize the woman? (Mrs. Alapa stands up.)

(Testimony of Mrs. Tom Lee See.)

A. No, I could not.

Q. Now, had you ever seen that woman who came into your house that night before in your life, before she came in there with the officers? A. No.

Q. When they came in there and started to search your house did they say anything about what they were looking for or anything of that sort? [330—250]

A. No, I don't know. I asked them what they were searching for and they did not tell me.

Q. Did anybody say anything about who they were looking for when they would say, "Is this the one; is this the one"? A. No.

Q. What had you been doing at your house there during the earlier part of the evening?

A. Well, took the children and bathed the children and put them to bed.

Q. You had been right there in your home all evening, had you? A. Yes.

Q. Nothing had happened earlier in the evening of any kind? A. No.

Q. After they had brought the woman in there and taken her around the house and asked her whether this one was the one, or this was the one, what happened, did they simply leave or did they do anything else, having searched the house and taken the woman around the house?

A. They left the house and then I put the children to bed and I go to bed.

Q. During your whole time of this visit there was there anything said to you or had you any idea

(Testimony of Mrs. Tom Lee See.)

of what they were doing, what they were looking for, or what the object of their visit was?

A. No, I have no idea whatsoever. [331—251]

Q. When you say that they said, "Is this the one?" and various other phrases, was this in English? Do you understand English?

A. Yes, I understand.

Q. Do you understand what I am saying now or just a few words? A. Oh, just a few words.

Q. How long do you think they were at your house altogether? A. Over 10 minutes.

Q. Was your husband at home that night?

A. Yes, he was sleeping.

Q. Didn't they point him out? A. No.

Q. He was not sleeping in the room with the child?

A. He was sleeping in the next room.

Q. Had he been there all evening? A. Yes.

Q. And they went away, that is all that you know about that? A. That is all.

Cross-examination.

(By Mr. PATTERSON.)

Q. Your husband used to be in the store business?

A. Yes.

Q. On Hotel Street? A. Yes.

Q. How big a store did he have there?

A. Small little store, one story and we got half.

Q. How big a space did that store occupy? [332—252]

A. She says about 10 feet wide.

The COURT.—As long across as this room?

(Testimony of Mrs. Tom Lee See.)

Q. How long?

A. I think,—I don't know whether it is 20 feet or not deep.

Q. Saying this is 10 feet wide, taking this wall over here as a base, how far would it run this way?

A. From this corner here over to that picture there, about that deep. (Indicating.)

Q. About how wide, bring it over from the wall to yourself and past yourself?

A. From the corner there to that picture, about that wide.

Q. What did he sell in the store?

A. Tobacco, soda-water, post-cards.

Q. And that is on Hotel Street, between Nuuanu and what?

A. It is right next to the drug-store on the corner of Nuuanu and Hotel Street, right next on Hotel Street.

Q. What drug-store?

The INTERPRETER.—There is a drug-store on the corner of Nuuanu and Hotel Street, right next.

Q. He went out of business last September?

A. Yes, last September.

Q. Closed up the store or sold it?

A. Closed up the store.

Q. Business poor? A. Business poor.

Q. Since September your husband has not worked, is that correct? [333—253] A. No.

Q. How old a man is your husband?

A. Sixty years old.

(Testimony of Mrs. Tom Lee See.)

Q. Is he strong or is he sickly?

A. Well, he is not sickly, but he is pretty old.

Q. He is your present husband, isn't he?

A. Yes.

Q. And the father of that child you hold in your hands? A. Yes.

Q. How old is that child?

A. Over three months.

Q. When was the store closed up?

The COURT.—Last September.

Q. When was the store closed up?

A. Closed in September.

Q. Of this year? A. Yes.

Q. Who opened the door this night when the officers came? A. I came and opened the door.

Q. Were you dressed? A. Yes.

Q. Like you are to-day?

A. Not these, other clothes.

Q. Had on your house clothes? A. Yes.

Q. Did you come to the door immediately?

A. When they knocked at the door I woke up, and stood [334—254] a while and listened. I opened the door and as soon as I opened the door the officer showed me his badge and then came in.

Q. The light was on in the house, was it not?

A. Yes, I have to put the light on in order to put those children to sleep.

Q. You had to put the light *out* in order to put the children to sleep? A. Yes.

Q. Did you leave the light on all night in your house? A. Yes, one light burned all night.

(Testimony of Mrs. Tom Lee See.)

Q. In which room was the light in which the light was on all night?

A. The light in the parlor was shining in the bedroom.

Q. You left the light on that night to put the children to sleep, is that correct?

A. Every night.

Q. Did the children sleep in the front room?

A. The big boy sleeping in the front room.

Q. In the parlor?

A. There is no room in the parlor.

Q. In this, this room with the parlor, there is no one sleeps in there?

A. No, nobody sleeps in that parlor.

Q. Where were you that night when you heard the knock on the door?

A. I was in my bedroom giving milk to this child here.

Q. Nursing the child? A. Yes. [335—255]

Q. At the time the knock came you were nursing the child, is that correct? A. Yes.

Q. The child was at your breast? A. Yes.

Q. You remember that distinctly? A. Yes.

Q. And when they came in to the room, these officers, they begin to look around?

A. Looked around and flashed a light under the bed, under the table.

Q. You remember distinctly that this woman said that—pointed to your boys and said that is not the boy, is that correct? A. Yes.

(Testimony of Mrs. Tom Lee See.)

Q. Wasn't there an old man in the house that was dressed up that night?

A. That was my husband, he was sleeping in the room when the officers came and woke him up.

Q. That was your uncle?

A. That was my husband.

Q. And did he have all his clothes on?

A. Well, he had his underwear on.

Q. He did not have his outer clothes on?

A. No.

Q. What did you say you did when you heard this knock at the door?

A. As soon as they knocked at my door I woke up.

Q. They woke you up? [336—256]

A. Well, I was nursing my child, I was half asleep.

Q. You were just half asleep then?

A. Half asleep and half awake.

Q. They did not wake you clear up, they just woke you half up, is that it?

A. Well, half awake, half asleep.

Q. What time did you go to bed that night?

A. After 10 o'clock.

Q. Do you sleep with your clothes on? A. Yes.

Q. Don't you have night clothes to sleep in?

A. No, Chinese clothes.

Q. And the clothes you sit around the house in you sleep in at night? A. Yes.

Q. You mean to tell us that you have no particular dress which you wear when you retire at

(Testimony of Mrs. Tom Lee See.)

night different from the dress you wear in the day-time?

A. Well, same kind of clothes when we sleep, changed to another dress the same as day clothes.

Q. Do you sleep with your shoes on? A. No.

Q. These officers found some opium containers in your house that night, didn't they?

A. That is two horns, when we moved that was left in the old clothes by one of my cousins.

Q. Where did they find these two horns?

A. They found *that* horns in the kitchen, in the clothes [337—257] basket.

Q. And they were left there by your cousin?

A. Yes.

Q. Where is your cousin now?

A. I don't know where he is at now, sometimes he goes to work down in the country, sometimes he works in town here.

Q. When did your cousin leave these opium horns in this house?

A. I don't know when did he leave there. When we moved we wrapped all the things in the old clothes and moved up there.

Q. Did you tell the officers your cousin had gone to China?

A. No, I did not. I told him I didn't know where he is at.

Q. Was Lee Choy out to your house that night?

A. No.

Q. Did you see him that night?

A. No, I did not see him.

(Testimony of Mrs. Tom Lee See.)

Redirect Examination.

(By Mr. ULRICH.)

Q. You say the officers found two opium horns in your house. What do you mean by opium horns? I will ask you to describe it.

A. That is two horns. You know opium horn near bone, something like bone, and near glass.

Q. That is something used to ship opium in or smoke it or use it with? [338—258]

A. Well, I don't know how they get this thing, these horns.

Q. Are those tins of opium—the tins aren't here.

Mr. PATTERSON.—I will admit it is not a tin of opium.

The COURT.—She does not say that it is an opium tin but an opium horn.

Q. You say you left a light in there so that your child could sleep. Did you have to get up from time to time during the night to take care of your child?

A. Yes, I would get up to nurse the baby, change the diaper.

Q. When you say you closed up your store what did you mean by that, was the building closed up or had some other person moved in to take over the business?

A. Well, the business was sold and at the same time the other people got the lease of that place.

Q. And your husband is now retired and is doing nothing? A. No.

Q. That is all.

(Testimony of Mrs. Tom Lee See.)

Recross-examination.

(By Mr. PATTERSON.)

Q. Is your husband a rich man or a poor man?

A. Poor man.

Q. He has no source of income?

A. Nothing. He has nothing at all, only raise up the children.

Reredirect Examination.

(By Mr. ULRICH.) [339—259]

Q. You have two grown sons that are helping support you and the family, haven't you? A. Yes.

Q. These opium horns were nothing like this, were they. (Indicating tins of opium.)

A. These opium horns are made out of horn.

The COURT.—Cow's horn?

A. I think it is from the cow's horn.

Mr. PATTERSON.—(Indicating opium tins.) Do you know what this is in here?

A. I don't, never saw anything like that before.

(Witness excused.)

Testimony of Won Tim, for Defendant.

WON TIM, called and sworn as a witness for the defendant, testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. What is your name? A. Won Tim.

Q. How old are you? A. Twenty-six.

Q. You were born in Hawaii and lived here all your life? A. Yes.

(Testimony of Won Tim.)

Q. You were educated in the public schools in Hawaii, were you? A. Educated?

Q. In the public schools in Hawaii? [340—260]

A. Yes, I was, here in the Pearl City School.

Q. Did you go from the grammar school into high school, or was your education purely in the grammar school?

A. Just in the grammar school, and I went back to China.

Q. You went back to China? A. Yes.

Q. When did you go back to China? A. 1909.

Q. And did you stay there?

A. About a year and one-half.

Q. Studying Chinese and other things there?

A. Chinese and other things, yes.

Q. What have you been doing in the past year or so as a business? What is your business? What do you do? A. Here now?

Q. Yes. A. Chauffeur.

Q. What kind of a car do you drive?

A. Hudson.

Q. How long have you been driving that car?

A. About two years.

Q. Where is your stand, where do you keep your car? A. On Smith and Hotel Street.

Q. Have you been at that same stand all this time, two years? A. Yes.

Q. Before that two years what did you do? [341—261]

A. Well, I was a bartender for a while, on the water.

(Testimony of Won Tim.)

Q. Do you know Lee Choy, the gentleman here?

A. Yes.

Q. Have you known him for some time—how long have you known him?

A. He was driving with me, the same stand.

Q. When he was driving as a chauffeur you knew him? A. Yes.

Q. He had a car at your stand? A. Yes.

Q. Do you know a Chinese person here in town named Chin Tai? A. Yes, I know him.

Q. Do you know where his store is? A. Yes.

Q. Where is Chin Tai's store?

A. On Maunakea Street, near Hotel Street.

Q. Maunakea near Hotel? A. Yes.

Q. Do you remember hearing of the arrest of Lee Choy sometime last month? A. Yes.

Q. You have in mind hearing about that or reading it in the paper? A. I saw it in the paper.

Q. Now, do you remember the day when he was arrested, according to the reports that came to you, can you remember that night? [342—262]

A. It was one night I took him over to Kaneohe.

Q. Do you remember that night?

A. It was the 18th, I guess, last month.

Q. Do you remember hearing about his arrest the next day? A. Yes, the next day.

Q. The next morning you heard about it. I merely want to call your attention to that particular date, the 18th, the morning after the day you heard of his arrest. On that night of the 18th did you see Lee Choy? Did you see him that night, the 18th?

(Testimony of Won Tim.)

A. I drove him down in the country that night.

Q. Now where did you pick him up and take him on to your automobile?

A. They rang me up around Chin Tai's store. I got to my stand. They told me to go down to the store.

Q. And you did go down to the store? A. Yes.

Q. At about what time did you go to Chin Tai's store that night?

A. I guess about a little after ten past nine.

Q. Who did you take into your automobile at Chin Tai's store a little after 9 that night?

A. Took Lee Choy and Chin Tai.

Q. And where did they sit in your automobile?

A. Sit in the back seat.

Q. Anyone else sit in the car at all?

A. Nobody else, only them two. [343—263]

Q. Then where did you go with Chin Tai and Lee Choy sitting in the automobile?

A. Right straight down to Kaneohe.

Q. From the store, over the Pali?

A. Over the Pali, yes.

Q. Did you stop anywhere or not between Honolulu and Kaneohe? A. No, went right down.

Q. Did you proceed at a fast speed or just an ordinary speed. A. Ordinary speed, not fast.

Q. About how long did it take you to make the trip?

A. I guess about three-quarters of an hour.

(Testimony of Won Tim.)

Q. Three-quarters of an hour. Have you a clock or watch in your automobile?

A. Yes, a special clock on the dash board.

Q. Did you notice about what time it was when you got over to Kaneohe?

A. I think it was about 10 o'clock, I guess.

Q. Do you say that because you remember looking at the time or because you think it is about 10 o'clock?

A. I think by the time I left the store, took me three-quarters of an hour to get down there.

Q. Did you notice the time when you left the store?

A. Yes, when I left the stand I noticed the time.

Q. When you got to Kaneohe where did you go in Kaneohe? A. Called down to Awai's house.
[344—264]

Q. Where is that house?

A. Past Kaneohe court, I guess half a block. I turned in to Awai's house.

Q. You say Awai, is that the man known as Hoon Wai? A. I knew him as Hoon Awai.

Q. Have you seen him here this morning, waiting out in the hall? A. Yes.

Q. You saw him come in here and testify did you not? A. Yes.

Q. Now, when you got to his place, this Awai or whatever his name is, did you stop there?

A. Yes, stopped there.

(Testimony of Won Tim.)

Q. Did you get out of the automobile or did you sit in it? A. I stayed in the automobile.

Q. Stayed in your automobile. And what did Chin Tai and Lee Choy do?

A. They were in the house.

Q. How long do you think it was that you sat out in the automobile waiting for Lee Choy and Chin Tai before you started back to town again?

A. I guess between half an hour and three-quarters of an hour.

Q. Between half and three-quarters of an hour. Do you remember how far you were from the house, where Chin Tai and Lee Choy had gone? [345—265]

A. His house is near the street, just a little—wide as this hall from that end to there. (Indicating.)

Q. You stayed about as far as one side of the room to the other from the house where they went?

A. Yes.

Q. Did they or any of them bring anything out and put it in the automobile?

A. They got a crate, a big box they packed with eggs in it, and a pack of chickens.

Q. Where did they put the box with the eggs?

A. The eggs were put in a box or crate.

Q. Where did they put the chickens?

A. Tied them on the running-board.

Q. Did you stay out there in the automobile all the time while they were there? A. Yes.

Q. And after you had stayed there for about three-quarters of an hour did they come out and get in your car again?

(Testimony of Won Tim.)

A. Yes, came out and walked right home.

Q. Did the man who owned the place there, Awai, or whatever his name is, come out to your car at all?

A. No, I did not see him in that car.

Q. You don't think he came out? A. No.

Q. Did anything particular happen while you were staying out there that you can recall?

A. No, sir. [346—266]

Q. Did you notice what time it was when you started back to Honolulu?

A. I got in town about half-past 11, but I do not know what time I left there.

Q. Did you notice the time you left there—You say when you got back to town you noted the time, is that right?

A. When I got home it was about 35 minutes past 11.

Q. But you don't know what time exactly you left Kaneohe?

A. Quarter to 11, 10 minutes to 11, something like that.

Q. You merely judge that from the time you got back and the time you think you took for the trip?

A. Yes.

Q. You drove on back to town the same way you came, did you, from there over the Pali?

A. The same way.

Q. Chin Tai and Lee Choy were sitting in the back seat? A. Yes.

Q. Did you stop anywhere on your way back to town before you went back to Chin Tai's store?

(Testimony of Won Tim.)

A. Came right back to Chin Tai's store.

Q. When you got to Chin Tai's store you stopped there, did you? A. Yes.

Q. Did they get out there?

A. Yes, they took their eggs and chickens out and I went home. [347—267]

Q. Who paid you for the trip?

A. Lee Choy paid me.

Q. Paid you then? A. Yes.

Q. How much did he pay you?

A. About six dollars.

Q. And then you went on back to your auto stand? A. I went back, right home.

Q. You went home? A. Yes.

Q. You noticed the time when you got back?

A. Yes.

Q. And it was what time?

A. 35 minutes past, about half-past 11, or 35 minutes past 11 when I got home.

Q. And the next morning you heard that Lee Choy had been arrested?

A. In the morning I did not know it, in the afternoon I saw it in the last edition of the paper

Q. You saw it in the paper the next day?

A. Yes.

Cross-examination.

(By Mr. PATTERSON.)

Q. How long were you over in China?

A. About two years.

Q. Have you ever been arrested? A. No.

(Testimony of Won Tim.)

Q. And do you know,—how long have you known Lee Choy? [348—268]

A. I was driving on the stand with Lee Choy.

Q. How long ago?

A. He quit driving over a year, I think I knew him over three years.

Q. Drove on the same stand together?

A. He went off the stand once.

Q. You got to know him pretty well then didn't you? A. Yes, pretty well.

Q. You and he were good friends?

A. Not very good friends, he knew me and I knew him, we drove from the same stand.

Q. What time did they ring you up that night?

A. About nine or after nine.

Q. It was after 9 they rang you up? A. Yes.

Q. They rang you up at your stand?

A. Yes, Smith and Hotel Street.

Q. You went up to Chin Tai's place? A. Yes.

Q. Can you fix the hour when they rang you up?

A. I am not sure. I got down to Chin Tai's from about 10 after 9, to 10 after 9 to a quarter after 9.

Q. What kind of automobile have you got?

A. A Hudson.

Q. How far is it from here to Kaneohe?

A. I think it is about 12 or 13 miles, I guess.

Q. You think 12 or 13 miles. This night how long were you gone altogether? [349—269]

A. I think about two hours and a half.

Q. You think about two hours and a half. You had to figure that up?

(Testimony of Wen Tim.)

A. I left a quarter after 11, a quarter after 9,—and got back about half-past 11.

Q. So you just figured it up now. You did figure it up just now on the stand, how long you had been gone?

A. No. It is a quarter past 9, well I say from 9 o'clock to half-past 11, two hours and one-half.

Q. Just now on the stand, when I asked you the question, you immediately figured how long you were gone, didn't you, you figured up the time just now. Did you think about this yesterday, how long you were gone? A. I do not understand.

Q. You were gone about two hours and one-half you say? When did it first occur to you that you were gone two hours and one-half, just now or yesterday, on the 18th or when?

A. On the 18th night.

Q. That is when you figured up you were gone about two hours and one-half? A. Yes.

Q. Is that what you base your charge on? You charged him six dollars for the trip, didn't you. Is that what you fix your charge on, being gone two hours and one-half?

A. It is—I did not charge them by hours, just charged them by the trip.

Q. You say you first thought about being gone two and one-half [350—270] hours on the 18th, didn't you? A. Yes.

Q. And figured out how long you had been gone that time? A. Yes.

Q. When you go on a trip from your automobile

(Testimony of Won Tim.)

stand, and stand in front of a man's house for an hour, don't you charge him for that?

A. If it is a friend like that we do not charge him.

The COURT.—Did you fix this charge of six dollars before you started, or after you returned. When did you tell him you would charge him six dollars?

A. Yes, he started to pay me six dollars to go over there.

Q. Who paid you six dollars?

A. Lee Choy; came back and he paid me.

Q. When did you arrange that you would charge him six dollars?

A. We always take him down there for six dollars.

Q. Anybody? A. No, not anybody.

Q. How many times did you take Lee Choy down there?

A. About three times; I don't know; I don't remember.

Q. Did you take him down since this trip?

A. No.

Q. You have not been over there since then?

A. No.

Q. Were you over there with Chin Tai since then?

A. Since that night? Only one time, that night.
[351—271]

Q. Did you ever come over there the night before this time? A. Yes, went down there one time.

(Testimony of Won Tim.)

Q. In the night-time? A. Yes.

Q. What time did you leave here?

A. Between 7 and 8; I can't remember; long ago.

Q. How long ago was that? A. Last month.

Q. October? A. Yes.

Q. And then it was the same month this crime happened; the same month that you went over with Lee Choy and Ching Tai, wasn't it? A. Yes.

Q. You made two trips that month. What did Lee Choy do there? A. Took a package over there.

Q. During that time?

A. I know last month he took a box of apples down there.

Q. He took a box of apples over to him?

A. Yes.

Q. You are sure they were apples? A. Yes.

Q. What time did you leave here, about 7 or 8 o'clock that night? A. I guess so, yes.

Q. What time did you get to Kaneohe that night?
[352—272]

A. I don't know; I don't remember what time.

Q. About what time?

A. It took me about three-quarters of an hour to get there.

Q. How long did you stay over there that time?

A. That time went into the house, took a ride over to Heeia.

Q. Did you go over to Heeia to call on another Chinaman? A. Just took a ride there.

Q. You called on another Chinaman in Heeia?

A. No.

(Testimony of Won Tim.)

Q. How far is Heeia from Kaneohe?

A. About a mile, I guess.

Q. Was there anyone else in the automobile with you and Lee Choy on that trip?

Mr. ULRICH.—I want to interpose some objections. Counsel simply takes the witness over times, over occurrences and over other happenings that have nothing to do with the case,—to take him over other trips he has made before this time. I submit it is unreasonable cross-examination.

(Objection overruled.)

Mr. ULRICH.—Exception.

Q. Who went with you besides Lee Choy to Heeia on that trip? A. Four or five boys.

Q. Chinese boys? A. Chinese boys. [353—273]

Q. Did you go in Awai's house that night?

A. No, I did not go in.

Q. You have never been in his house? A. No.

Q. Never been inside?

A. That night I did not go in, though.

Q. Were you ever inside Awai's, were you?

A. Yes, before.

Q. You know Awai pretty well, don't you?

A. No, not pretty well. I could recognize him if I saw him on the street.

Q. Did you see Awai on the night of the 18th?

A. He did not come outside. I saw him on the veranda. I was out sitting in the machine.

Q. What was he doing?

A. He was talking to Lee Choy, and Chin Tai.

(Testimony of Won Tim.)

Q. He did not talk to you that night?

A. Talk with me? No.

Q. Never said a word? A. No.

Q. You remember that, don't you? A. Yes.

Q. You didn't go in the house and drink tea with him? A. No.

Q. He never said a word to you that night?

A. No.

Q. If he had said anything to you you would have remembered it now, wouldn't you? [354—274]

A. I guess he—I do not know. I think he did not talk to me at all.

Q. He did not say a word, did he? A. No.

Q. Didn't he come out and help tie the chickens on the automobile? A. No, Lee Choy took it out.

Q. He did not tie them on the automobile?

A. Tied it on to my extra tire, fastened it on.

Q. Did he use a rope? A. Kind of heavy string.

Q. Where did he get the string?

A. In my side pocket.

Q. How far was your automobile from the house?

A. About from here to this wall.

Q. From that wall to this wall, is that correct?

A. Yes, about that wide.

Q. About 40 feet, would you say that was, or how many feet?

A. I don't know how wide is this wall.

Q. Awai didn't come off the porch that night at all, did he? A. I don't quite remember.

Q. You do not quite remember? A. No.

Q. You say they had the eggs in a box?

(Testimony of Won Tim.)

A. Yes, sir.

Q. Did they take them out when they first came there, or wait until they left? [355—275]

A. Until they left.

Q. And you saw the three of them on the porch?

A. Yes.

Q. You saw them there all the time? A. Yes.

Q. What were they doing?

A. They were talking. I didn't pay any attention to them at all, except they were talking.

Q. You heard them talking from where you were?

A. I heard them talking, but I do not know what they were saying.

Q. The three of them were on the porch together?

A. Yes.

Q. Did you see them all the time?

A. Sometimes they go in the office.

Q. Did you sit in the automobile all the time?

A. Yes.

Q. Didn't get out at all?

A. No. One time the chicken,—when Lee Choy brought the chickens, I went out and tied the chickens up.

Q. Awai stood on the porch all the time?

A. Yes.

Q. Did he help pack the box out, the egg box?

A. No.

Q. Who took that out? A. Lee Choy.

Q. Who packed out the chickens?

A. He packed it out too. [356—276]

Q. Went back and got the chickens? A. Yes.

(Testimony of Won Tim.)

Q. Was the box all fixed when you got there?

A. I don't know whether it was all fixed or not.

Q. Did you see them packing the eggs?

A. No.

Q. You didn't hear them talk anything about that? A. No.

Q. Never heard what they were talking about?

A. No.

Q. Did you see them drinking tea?

A. I don't quite remember that.

Q. You don't remember anything about tea that night at all? A. No.

Q. You were in China a year and a half?

A. Two years.

Q. Went to school over there?

A. I went to school a year and a half and I quit.

Q. And what time did you leave Awai's place that night on the way back to Honolulu?

A. I guess about a quarter to 11, I guess. I got home about half-past 11, and took me about three-quarters of an hour to get back.

Q. You say before you started you had a talk about how much you were going to charge Lee Choy for going over there? A. Yes. [357—277]

Q. In front of Chin Tai's store?

A. We did not—he did not tell the price there.

Q. He did not say the price, how much you were going to charge him to take him over to Kaneohe and back?

A. Every time I take him over there he give me six dollars.

(Testimony of Won Tim.)

Q. You used to be a bartender? A. Yes, sir.

Q. And a waiter? A. Yes.

Q. That is before you were a chauffeur?

A. Yes.

(Witness excused.)

Testimony of You Lum, for Defendant.

YOU LUM was duly called and sworn as a witness for the defendant, and testified as follows: (Through the Official Chinese Interpreter.)

Direct Examination.

(By Mr. ULRICH.)

Q. Your name? A. You Lum.

Q. What is your occupation? What do you do?

A. Salesman.

Q. Salesman? Who do you work for? Where do you work? A. Chin Tai.

Q. You are a clerk or worker in Chin Tai's store, are you not? A. Yes. [358—278]

Q. Do you remember a certain night last month, October, when—I will withdraw that question. First, do you know Lee Choy, the defendant here?

A. Yes, I do.

Q. Now then do you remember a certain night in October when Lee Choy came to Chin Tai's store and left with Chin Tai on a trip to the country?

A. Yes.

Q. Can you say from anything that you have in mind what date that was in October, or what night?

A. October the 18th.

(Testimony of You Lum.)

Q. And how do you remember it as October the 18th? A. I remember I entered it in a book.

Q. What did you enter in a book?

A. When I bought the tomato and some other stuff I entered it in a book.

Q. You remember it as the same day you bought some things and you entered it in the book?

A. Yes.

Q. Do you remember hearing of Lee Choy's having been arrested?

A. Yes, I do, when Chin Tai told me that Lee Choy was arrested.

Q. When did you hear from Chin Tai that Lee Choy was arrested with respect to this evening that you saw Lee Choy and Chin Tai in this store?

Mr. PATTERSON.—Objected to as leading.

The COURT.—Objection overruled. [359—279]

A. The following morning.

Q. The following morning you heard that he had been arrested. Now what time was it, as near as you can remember, when Lee Choy came to the store there that night?

A. I think it was about 9 o'clock that evening. I was in the front part of the store.

Q. Was anyone in the store there when Lee Choy came in about 9 o'clock excepting yourself, and Chin Tai and Lee Choy?

A. Nobody else but Chin Tai.

(Adjournment taken until 9 o'clock, A. M. Wednesday, November 15, 1922.) [360—280]

(Testimony of You Lum.)

In the United States District Court in and for the
Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

On Wednesday, November 15th, 1922, at 9 o'clock A. M., all parties being present as before, the following further proceedings were had and testimony taken:

(Jury all present.)

YOU LUM resumed the stand for further examination, and testified as follows: (Through the Official Chinese Interpreter.)

Direct Examination (Continued).

(By Mr. ULRICH.)

Q. At the close of last session you were telling us about the occasion on the night of October 18th when Lee Choy and Chin Tai were together in Chin Tai's store at about 9 o'clock. How long was it after Lee Choy came to the store there that he and Chin Tai left, as near as you can remember?

A. Ten minutes.

Q. Were they there about ten minutes?

A. Over ten minutes.

Q. From where you were while they were there together [361—281] could you overhear or did

(Testimony of You Lum.)

you overhear any part of the conversation between them? A. No.

Q. What time did you usually close the store there at night?

A. Sometimes half-past 9, sometimes half-past or near ten.

Q. Now on this night when Chin Tai left with Lee Choy did he close up the store, or what did he do?

A. They did not close the store, told me they were going down the country, told me to wait a little while and close up.

Q. Was anyone else left in the store there excepting you? A. Left only myself.

Q. Did you see how they left the store, that is whether they went away in a car or walked?

A. They got on the machine and drove away.

Q. And they went away and you stayed there in charge of the store, did you? A. Yes.

Q. About when did you close the store up?

A. After 9 o'clock, near 10.

Q. And you did not see any more of Lee Choy or Chin Tai that night? A. No.

Q. Do you know a man named Hoon Wai who lives down in Kaneohe? [362—282]

A. Yes, I know him. I know his name, but I don't know where he lived.

Q. Now did you see this man Hoon Wai within a few days after this time, that you have testified to?

A. I saw him four or five days after.

(Testimony of You Lum.)

Q. Well, can you tell us what the date was you saw him?

A. I don't remember; I think it was on Monday, four or five days after.

Q. Do you remember what day of the week this was Lee Choy and Chin Tai were at the store?

A. Wednesday.

Q. And if it was Monday that you saw him, was it the following Monday?

A. Yes, the following Monday, either Monday or Tuesday.

Q. Do you have anything to do, in the course of your duties in Chin Tai's store there, in taking care of the books?

A. I have nothing to do with the books there, there is another bookkeeper in there taking charge of the books.

Q. Now when was it, under what circumstances was it, that you saw him Monday,—under what circumstances was it that you saw him on Monday, as you have testified,—where?

A. I saw him pass my store.

Q. Did he come into your store there?

A. No, he did not.

Q. You are not the bookkeeper?

A. No. [363—283]

The COURT.—You say you saw him pass your store. You mean by that he did not stop, he kept on moving?

A. Passed right along the store.

Q. What is the bookkeeper's name there?

(Testimony of You Lum.)

A. There is two in there, one Chin Tai himself, another one by the name of,—a Chinese boy and himself taking charge of the books.

Cross-examination.

(By Mr. PATTERSON.)

Q. What time did you close up on the night of the 18th? A. After 9 o'clock, after 9, near 10.

Q. You never make any entries in the books at all? A. No.

Q. You got nothing to do with the books at all?
A. No.

Q. Do you sell anything on credit there?
A. Yes.

Q. And when you do that do you make an entry in the books?

A. No, tell Chin Tai and Chin Tai put it in himself.

Q. You never write it in yourself? A. No.

Q. Never since you have been in the store have you done that? A. No.

Q. Who put the money away that night?
A. Chin Tai.

Q. Before he went over to Kaneohe?
A. Yes. [364—284]

Q. You saw him count it up? A. Yes.

Q. Where did he put it? A. In the safe.

Q. What time does he usually count the money up at night? A. After 8 o'clock.

Q. You are positive that on this night, before he went to Kaneohe, that he counted up the money, is that correct? A. Yes.

(Testimony of You Lum.)

Q. Was Lee Choy there when he was counting up the money? A. No, he wasn't there.

Q. And you are just as sure that he counted up this money as you are that Lee Choy came there that night, aren't you?

A. After Chin Tai put the money away then Lee Choy came.

Q. Did you see him count the money on the counter as he usually does? A. Yes.

Q. See him make an entry in the books?

A. Yes.

Q. What did he do with the money?

A. After he counted the money, entered in the books, and then took it and put it in the safe.

Q. Did he lock the safe? A. Yes.

Q. Do you know how to get into the safe?

A. No. [365—285]

Q. Chin Tai is the only man around there who knows how to get in and out of the safe? A. Yes.

Q. How big is this safe?

A. As big as that railing there. (Indicating.)

Q. How deep is it, deep as your hands are to fold, or just about how deep?

A. About that wide, about that deep. (Indicating.)

Q. About square? A. Yes.

Q. And where do you live?

A. On Pauahi Street,—the other street I don't know the name of.

Q. How far from the store?

(Testimony of You Lum.)

A. Two or three blocks away from the store,—
three or four blocks away from the store.

Q. Is there another bookkeeper in there besides
Chin Tai? A. No, nobody else.

Q. Who opened up the store the next morning.

A. I did.

Q. Did you find the eggs when you got there
the next morning? A. I did.

Q. Is there a stove in the store?

A. Yes, a stove.

Q. Did you find the chickens too? A. Yes.
[366—286]

Q. Did you count the eggs that morning?

A. Yes, I did.

Q. How many were there? A. Three hundred.

Q. You are sure of that? A. Yes.

Q. Did you sell these eggs in the store or do
you eat them yourselves down there? A. They sell.

Q. Was you out of eggs the night before?

A. All sold, eggs all sold.

Q. The eggs were all sold the night before?

A. Yes.

Q. The box had not been opened when you got
there in the morning? A. No.

Q. Where were the chickens?

A. One box of chickens.

Q. The chickens were in a box? A. Yes.

Q. You remember the box?

A. Yes, I remember.

Q. Describe the box to the gentlemen of the jury?

A. A box about that big, I seen.

(Testimony of You Lum.)

The COURT.—A box you keep in the store, a box to put the chickens in. You understand the chickens came and were stored in that box?

A. It is our box. [367—287]

The COURT.—Is that the box you kept there for putting chickens in?

A. Yes, they brought the box with the chickens the same time.

Q. In other words, that is a box that was not in the store the night before? A. No.

Q. Were those chickens dead chickens or live chickens? A. Live chickens.

Q. What did you do with these chickens afterwards? A. I took the chickens off and weighed.

Q. Did you weigh them yourself? A. Yes.

Q. How much did they weigh?

A. Twenty-four pounds.

Q. Have you got a chicken run there in the back of the store? A. No.

Q. Have you got boxes that you ordinarily kept chickens in?

A. Whenever we bought any chickens why we put up a box and kept them there.

Q. Have you got a regular box for that purpose?

A. Yes, we have one.

Q. That was not in use this night, was it?

A. Yes, we used that box.

Q. You had other chickens in the store then?

A. No. [368—288]

Q. But this regular box you ordinarily used was not in use that night, there were no chickens in it?

(Testimony of You Lum.)

A. No, did not use that night.

Q. And these chickens were very comfortable in this box that came from Kaneohe? A. Yes.

Q. What did you do with this box that the chickens came from Kaneohe in?

A. Well, I took the chickens out inside the box, put them outside the store for sale.

Q. Did you sell all the chickens at one time?

A. Sold three.

Q. Now, after you had sold the chickens what did you do with that box?

A. Throw them away, burn them up.

Q. You still got your regular box down there?

A. Yes, I still have that other one.

Q. Do you know Lee Choy? A. Yes, I know him.

Q. How long have you known him?

A. I have known him for a long time.

Q. Do you know this Chinaman from Kaneohe?

A. I do not know him.

Q. Did you ever see him before he came up to court? A. No.

Q. You have never seen this man from Kaneohe until you came up to court?

A. I saw him over when he passed the store.

[369—289]

Q. When he passed the store where?

A. Passed the store by our street.

Q. How did he pass, in an automobile or how?

A. Walked.

Q. Did he come inside the store? A. No.

Q. He has never been inside your store?

(Testimony of You Lum.)

A. Only when he buy something he come in the store.

Q. Now, what night did you say this was Lee Choy came to get Chin Tai to go to Kaneohe?

A. On the 18th.

Q. Who telephoned—How did he come up there, come in an automobile or afoot or how?

A. He came on an automobile.

Q. The automobile waited out in front for him and Chin Tai?

A. Yes, waited in front of the store.

Q. Now there was a Chinese boy by the name of Won Tim that drove them over, do you know him? A. No, I do not know.

Q. Did you see him waiting out there that night?

A. No, I did not see him.

Q. But you are sure there was an automobile out there? A. Yes.

Q. Did you see the automobile?

A. Well, there was an automobile. In fact there is an automobile there every time. [370—290]

Q. Did you see Lee Choy get out of the automobile before he came into the store?

A. Well, I saw Lee Choy come in the store.

Q. Did you see him get out of an automobile?

A. I saw Lee Choy come in.

Q. What did Lee Choy say to you?

A. I did not hear him say anything; he did not say anything to me.

Q. Did he say anything to Chin Tai?

(Testimony of You Lum.)

A. Yes. He was talking to Chin Tai, but I don't know what they were talking about.

Q. Were you there in the store? A. Yes, I was.

Q. What were they talking, speaking what language? A. Speaking Chinese.

Q. Did you hear them say anything about a trip to Kaneohe?

A. Chin Tai told me, "Wait a little while, close up the store," he was going down the country.

Q. Was Lee Choy there when Chin Tai told you that? A. Yes, he was there.

Q. Did they say anything about how they were going to go?

A. Well, I did not hear what they say, I know they have to go on a machine.

Q. Where were they, in the front part of the store or where? A. Front part of the store.
[371—291]

Q. How long did they stay after Lee Choy arrived?

A. They stayed a little over ten minutes.

Q. What did they do, just talk while they were there?

A. Well, they were talking, but I don't know what they were talking about.

Q. You were in the store all the time? A. Yes.

Q. Did Lee Choy say anything about how they were going to go to Kaneohe? A. No.

Q. Did Chin Tai say anything about it?

A. Well, Chin Tai told me, "Wait a little while

(Testimony of You Lum.)

and close up," he is going down in the country, that is all he told me.

Q. Did they say anything about going over in an automobile? A. No.

Q. Did they telephone for an automobile?

A. No.

Q. Where is the telephone, in the front part of the store or back part of the store?

(Witness and Interpreter talk in Chinese.)

The COURT.—Does he not know where the telephone is?

A. The telephone was close to the wall there in the front, or back,—

The COURT.—Which wall?

A. It was in the office in the back part of the store.

Q. The telephone was in the office in the back part of [372—292] the store, and Lee Choy and Chin Tai were up in the front part of the store, is that correct?

A. They were talking inside of the office, at the back part of the store.

Q. They were talking inside the office at the back part of the store, you say? A. Yes.

Q. Do you know whether they telephoned or not?

A. No.

Q. Did they telephone or didn't they?

A. No, they did not telephone.

Q. If they had telephoned you would have known it, wouldn't you?

A. Yes, if they telephoned I could see them.

(Testimony of You Lum.)

Q. You were in the store there with them all the time? A. Yes.

The COURT.—Did I understand you to say they arrived at the store in an automobile? A. Yes.

The COURT.—The automobile did not come there after you arrived?

A. No, I saw the machine and Lee Choy came in.

Q. Then you saw the machine outside, did you?

A. Well, I saw a machine outside. Of course I was busy, in and out selling goods.

Q. But you saw the machine outside as Lee Choy came in, is that correct? A. Yes. [373—293]

Q. And I presume that is the same automobile they went out to the country in?

Mr. ULRICH.—Objected to.

The COURT.—You might ask him if he knows.

Q. Is that the same automobile that they went to the country in? A. That is the machine.

Q. You are very sure of that?

A. Yes, that is the same machine they got on, ever since they went out I didn't see them any more.

Q. That automobile was standing there in front of the store from the time Lee Choy came in until they left? A. Yes.

Q. How do you remember now that this was the night of the 18th?

A. Well, I bought some tomatoes on that day.

The COURT.—What?

A. I bought some tomatoes on that day.

Q. Where did you buy them?

(Testimony of You Lum.)

A. From the peddler on the wagon.

Q. What kind of tomatoes? A. This round kind.

Q. Do you sell tomatoes in the store?

A. Yes, tomatoes and other things.

Q. Why did you buy tomatoes, for the store or yourself, that day?

A. I buy it for the store and for sale. [374—294]

Q. How many did you buy this day?

A. Four or five baskets.

The COURT.—What had the buying of these tomatoes to do with the date?

A. I bought the tomatoes. I put down there in the book so I can get money back from Chin Tai.

Q. Then you put in down in the books?

A. I put it on a piece of paper.

Q. Didn't you testify yesterday on the stand you entered it on the books?

A. No, I says put it on a piece of paper.

(Portion of testimony referred to read by Reporter.)

Q. Yesterday the stenographer has in his reports here that you entered it in the book, on two different occasions.

A. Well, I didn't say it was in the book, I says it was in a paper.

Mr. ULRICH.—(To Interpreter.) Is the Chinese word for book and the Chinese word for paper the same? My adviser says the question was asked yesterday the same as to-day. Ask the witness himself whether he says "book" or "memorandum"; aren't the words the same, or are they the same?

(Testimony of You Lum.)

The INTERPRETER.—Different. Book “hoo,” paper is “chee.”

Mr. ULRICH.—What is memorandum record, or something like that?

The INTERPRETER.—“Hoo.” [375—295]

Mr. ULRICH.—It can mean either “book” or “memorandum”?

The INTERPRETER.—Paper is different.

The COURT.—Have you any recollection as to what he did say yesterday?

The INTERPRETER.—He said book, entered in the book. “Faa chee,” memorandum, that is what he testifies to now.

Mr. ULRICH.—He says “put in book” or “put in paper.” Suppose you just want to say “made a memoraudum of it,”

The INTERPRETER.—Well, they got different words of saying, can say put in the book, put in the paper,—they call the memoranda anyway, or can say, “I put the memorandum in the book or in a piece of paper.”

The COURT.—What is your best recollection of just what he did say yesterday?

A. He says, “Entered in book, put it in a book.” This morning he says, “Put it in a piece of paper.”

Mr. PATTERSON.—Q. Now did you give this piece of paper that you made out to Chin Tai?

A. No, I did not give it to him, for I just kept that for a memoranda for my memory.

Q. You kept that for your memory. How many of these pieces of paper have you got?

(Testimony of You Lum.)

A. One piece of paper, I wrote that myself.

Q. Have you still got it? A. No.

Q. What did you do with it?

A. Throwed them away, burned them up. [376—296]

Q. When did you throw it away?

A. After he gave me the money I threw them away.

Q. When did he give you the money?

A. The same day.

Q. The 18th? A. Yes.

Q. When did you buy the tomatoes, what time in the day? A. In the morning.

Q. What time of the day did he give you the money? A. In the afternoon.

Q. And then you threw the piece of paper away?

A. Yes.

Q. And that piece of paper reminded you Lee Choy went to Kanoeha on the night of the 18th?

A. Yes, I remember that day he went down in the country.

Q. Is there anything else you did on that day?

A. Well, there is some other things, I do not remember now.

Q. Do you smoke opium? A. No.

Redirect Examination.

(By Mr. ULRICH.)

Q. You did not see these chickens and eggs coming back from Kaneohe, did you?

A. Yes, after they came back from the country I saw the chickens.

(Testimony of You Lum.)

Q. You did not see them brought into the place there? A. No. [377—297]

Q. All that you know is that you came there the next morning, that you found a box of eggs, and chickens in a box, that is right, isn't it? A. Yes.

Q. When you say they came in a box you say that merely because you saw them in the box the next morning, isn't that the idea?

A. Chin Tai told me that the chickens and eggs came from the country.

Q. What I am asking is, the reason you say the chickens came in a box is simply because you saw them in a box the next morning, isn't that right?

A. All I saw is just a box of chickens and the box of eggs, that is all I know.

Q. That is all you know?

A. That is all I know.

Q. You say there was automobiles standing outside your place there most of the time; is that right?

A. Yes, always machines standing outside.

Q. When you saw Lee Choy coming in the store that night first, he was coming in the door, isn't that what you said? A. Yes.

Q. You say that Lee Choy and Chin Tai were in the office in the back of the store talking in there, is that right?

Mr. PATTERSON.—We object to that on the ground that it is leading.

(Testimony of You Lum.)

The COURT.—I think that is proper re-direct. [378—298]

Q. Lee Choy and Chin Tai were talking together in the office in the back of the store; is that right?

A. Yes, they were talking inside the office.

Q. And they were talking in such a tone of voice you would not be able to hear what they were saying, didn't you say that?

A. No, I could not hear because I was selling goods.

Q. You were moving around back and forth in the front part of the store? A. Yes.

Q. You did not have them in sight all the time, did you?

A. No, there was a lot of people coming in the store buying goods.

Q. The telephone was in the office there, wasn't it? A. Yes.

(Witness excused.)

**Testimony of W. K. Richardson, for Defendant
(Recalled).**

W. K. RICHARDSON, recalled as a witness for the defendant, having heretofore been sworn, testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. Mr. Richardson, without taking you over the testimony you gave the other day, I simply want to ask you about two questions. You testified before in this case that you saw Lee Choy at the wharf on

(Testimony of W. K. Richardson.)

the night of October 18th when the "President Wilson" was in port, along [379—299] about 7:30 or 8 or 8:30, somewhere about that time, in the evening. You testified at a later time you saw this woman, Mrs. Alapa, go on the boat. Now, I will ask you to the best of your recollection how much time elapsed between the time you last saw Lee Choy and the time you first saw this woman?

The COURT.—How much time between.

A. Ask that question again.

Q. About, to the best of your recollection, how much time was there between the time you last saw Lee Choy on that night and the time that you first saw this woman, that is to the best of your recollection? A. About one hour.

Q. Can you say from the best of your recollection that you didn't see one go up immediately followed by the other, or see them go up together or close together?

A. I did not see them go up together.

Q. And there was a period of what you would call about an hour? A. Yes, sir.

Q. It might have been more, so far as that is concerned, or might have been a little less, perhaps?

A. Yes.

Q. That is your best estimate of the time that elapsed between the time you last saw Lee Choy and the time you first saw the woman, is that right?

A. Yes. [380—300]

(Testimony of W. K. Richardson.)

Cross-examination.

(By Mr. PATTERSON.)

Q. Mr. Richardson, how long have you known Lee Choy?

A. Well, I have been down on the front now about seven months.

Q. Have you known him all that time?

A. Well, you see, the new boys are not generally put on—

Q. Have you known him all that time? You answer my question. A. About that.

Q. You have known him about seven months?

A. Yes, about that time.

Q. You have seen him repeatedly down there?

A. Yes.

Q. Every time you are on watch he is down there?

A. Generally he is around there.

Q. And you saw him on this night?

A. Yes, sir.

Q. And you testified the other day it was around 9 o'clock—the last time you saw him?

A. 7:30—8:30.

Q. So, Mr. Richardson, then you testified the other day it was about half-past 8 or 9 o'clock, the last time you saw this man going on board that night, didn't you?

A. That is the last time I seen him going off.

Q. And you also testified it might have been an hour or two later, didn't you?

A. Yes, it might have been. [381—301]

(Testimony of W. K. Richardson.)

Q. You are not positive of the time, are you?

A. Well, I am not positive whether he came back after half-past 8 or 9.

Q. You are not positive whether he came back or not? A. Yes, I am.

Q. He may have gone on board again?

A. He may have.

Q. He may have come off the boat again after that? A. He may have.

Q. He may have been down there at 10 o'clock?

Mr. ULRICH.—Objected to. Of course he “may have.”

(No ruling by the Court.)

Q. Did you know that he had a pass?

A. Oh, yes.

Q. Do you pay the same attention to people who go on and off the boat with a pass as those who do not have a pass? If you know they have a right to go on the boat do you pay as close attention to them as you do to others?

A. When they come first I look at it, after awhile I don't bother very much, excepting some new faces.

Q. So you are not willing to swear that Lee Choy was not down there about 10 o'clock, are you?

Mr. ULRICH.—Objected to,—all the witness can say is to the best of his recollection whether he saw him.

The COURT.—You say it is your positive recollection that he was there at half-past 8 or 9, that you are sure of? [382—302] A. Yes.

(Testimony of W. K. Richardson.)

Q. Have you any recollection at all of seeing him after that? A. No.

The COURT.—He cannot say one way or the other, I suppose.

Q. Mr. Richardson, you testified this morning that it might have been an hour later when he was there?

A. It might have been. I don't remember he came there or not.

Q. This time you testified he was there half-past 8 or 9 o'clock, you are not sure what hour, are you? A. Of that I am quite positive.

Q. That it was along about that hour? A. Yes.

Q. But he may have come down there and gone on board while you were on the watch and you don't remember it, is that correct?

Mr. ULRICH.—Objected to.

The COURT.—That is a possibility that the jury can determine. The witness has no recollection of it, of course. If he did go on after that, if that is possible, the jury can tell that.

Q. What time did this woman go on board?

A. About 9:30 to 10, between those two.

Q. Between 9:30 and 10? A. Yes.

Q. And you do not remember seeing Lee Choy after that? [383—303]

A. I don't remember.

Q. You don't remember that at all?

A. No, sir.

Q. You are positive she was not down there before 9:30? A. She was not down there before 9:30.

(Testimony of W. K. Richardson.)

Q. And have you talked to anybody about this case since you were on the stand the other day?

A. No, sir.

Q. Not a soul?

A. The boys where we work together, the boys where we are working, the boys like to get a little information, how the case went on.

Q. Nobody in this courtroom, nobody said a word to you since you were on the stand? A. No.

Q. Has Lee Choy talked to you about this case since then? A. No, sir.

Q. Have you seen Lee Choy since then?

A. No, sir.

Q. Haven't talked to him at all? A. No.

Q. You were just called up here like a bolt out of the sky?

A. I was surprised when I got home last night at a telephone message to report down here to court.

Q. But you are not sure of the hours are you; you are [384—304] not sure it was half-past 8 or 9 o'clock that Lee Choy was there?

A. Of that I am a little more positive.

The COURT.—Are you positive of the fact that you saw him, or are you positive of the fact as to the time, which is it? You are sure you saw him, is that it? A. Yes.

Q. But you are not sure as to the time, or are you sure as to the time?

A. I am quite positive of the time.

Q. But you are more positive of the fact that you saw him or did see him? A. Oh, yes.

(Testimony of W. K. Richardson.)

Q. It might have been as late as half-past 9 when you saw him, is that correct?

Mr. ULRICH.—Objected to, he has given the best of his recollection, half-past 8 or 9 o'clock. He may say it may have been so and so. We object to that whole line of examination.

The COURT.—I am inclined to think he has told us about all he knows about it.

Mr. ULRICH.—There is a certain line of evidence having to do with the question which I imagine the Court would not allow in evidence from the ruling of the Court before, that is the matter of the practice of prostitution and so forth. I do not want to get it before the jury. I do want to make my offer proof though. [385—305]

Mr. PATTERSON.—I have no objection to any offer of proof you wish to make in the presence of the jury.

The COURT.—You make no objection?

Mr. PATTERSON.—I have no objection to his making an offer of proof.

The COURT.—You understand, gentlemen of the jury, an offer to prove certain facts is not evidence and you are not to consider that. Questions are asked by counsel and there are objections to the question and the Court sustains the objection, and then counsel makes an offer of proof. Of course you will realize the question of counsel is not evidence, and you will not infer any facts from it. The same principle applies to the offer Mr. Ulrich is now about to make.

Mr. PATTERSON.—I much prefer that counsel should produce some witness on the stand and ask these questions.

Mr. ULRICH.—I will be very glad to do that.

The COURT.—I see no occasion for it. It seems to me the authorities are very clear that questions put to a witness on the stand for the purpose of testing credibility, not otherwise material, is not material to the issue before the Court. He is bound by the answer. You are not permitted to prove the contrary. What is the use of taking up the time of putting witnesses on the stand?

Mr. ULRICH.—I will make the offer in the presence of the jury if counsel so desires. We offer to prove, [386—306] if the Court please, by witness Fong Huan, that on a certain day last week, I cannot give the exact day, he had a conversation with this Japanese driver that has testified here. We offer to have him identified, in regard to the prosecuting witness, Mrs. Alapa,—that on this day he had a conversation with this Japanese driver concerning this woman. The Japanese driver told him that he could and would procure this woman for him for the purpose of prostitution, naming a price but that he would not do it until after the present case had terminated, mentioning this case, in which conversation this man assured him that he could get this woman, and that her price was so much.

Mr. PATTERSON.—Objected to, that has no

(Testimony of Lee Choy.)

more business here than a case that is being tried down to the police court.

The COURT.—The objection will be sustained. The Court will not permit such testimony. Remember, the offer is not evidence, gentlemen, you are not to consider it.

(Lee Choy, the defendant, and an Interpreter, called.)

Mr. PATTERSON.—He is Hawaiian-born Chinese, educated in the public schools of Hawaii. I submit he should speak in English and not use an interpreter.

The COURT.—I always considered it fair. You might question him in English if you see fit.

Mr. PATTERSON.—I am suggesting in this matter that he be tried out, he claims to be an American, he can speak English, and should so speak on the witness-stand. [387—307]

The COURT.—I will permit him to have an interpreter if he wants one.

Testimony of Lee Choy, in His Own Behalf.

LEE CHOY, the defendant, was called and duly sworn as a witness in his own behalf, and testified as follows: (Through the Official Chinese Interpreter.)

Direct Examination.

(By Mr. ULRICH.)

Q. Lee Choy, how old are you?

A. Twenty-six years old.

Q. Are you married or single? A. Married.

(Testimony of Lee Choy.)

Q. How many children have you?

A. Four children.

Q. Where do you live?

A. Vineyard Street on Cunha Lane, Number 4 Cottage.

Q. What is your occupation, Mr. Lee Choy?

A. I am working, driving a truck.

Q. And who are you driving a truck for?

A. Ah Chew Brothers.

Q. How long have you been driving a truck for Ah Chew Brothers? A. Eight or nine months.

Q. And before you entered the employ of Ah Chew Brothers as a truck driver, what did you do?

A. Rent service.

Q. How long did you drive in the rent service?

A. Over a year. [388—308]

Q. Now, as a truck driver for Ah Chew Brothers what salary do you make?

A. Twenty dollars a week.

Q. Do you have any other source of income, or have you anything else? A. Yes, I have others.

Q. Well, what else do you do?

A. Selling chicken and chicken eggs, that is for myself.

Q. Where do you get these chickens and eggs that you sell? A. Kaneohe.

Q. Any particular person over there or from several?

A. One of these men down there.

Q. This man Hoon Wai? A. Yes.

(Testimony of Lee Choy.)

Q. Lee Choy, do you know this Japanese taxi driver, Kamihara, who has testified in this case?

A. I know him now.

Q. How long have you known him?

A. Since I was arrested.

Q. Before you were arrested—by being arrested you mean arrested on October 18th?

A. No, I don't know him before that day of the 18th.

Q. Did you or did you not ever call him up at his auto stand or at any auto stand at a time about two or three weeks before the 18th and ask him to come down to Ah Chew Brothers place of business.
[389—309]

A. No.

Q. You did not? A. No.

Q. Did you at about that time, or did you not, take a ride in his car, going to Young Street and stopping on Young, going along Beretania Street, and going down the waterfront where you dismissed him, did any such ride ever take place?

A. No.

Q. Did he ever drive you to any woman's house?

A. No.

Q. Did you ever see this woman, pointing to the prosecuting witness in this case, Mrs. Alapa, before you were arrested and brought over to an automobile in which she was on the evening of October 18th?

A. No; I know her at present.

Q. That was the first time you ever saw her in

(Testimony of Lee Choy.)

your life when you were brought up in the automobile? A. The first time.

Q. Did you ever know where she lived before this case arose?

A. No, even now I don't know where she lives.

Q. You don't know where she lives excepting what you have heard in the testimony in this case?

A. Yes, I heard of the lane.

Q. Now, on the night of October 18th, you call that night to memory, do you, as being the night on which you were arrested? [390—310]

A. Yes.

Q. Starting out about 6 o'clock, we will say, on that evening, what did you do, where were you about six o'clock on that evening, if you remember?

A. I was at the store at that time waiting for the boat to arrive, so that I can take my boss down to the wharf.

Q. Well, after you had waited at the store there with your boss, where did you first go?

A. I waited in the store, my boss telephoned down the wharf asking if the boat arrived or not, if the boat arrived then I took the boss down to the wharf.

Q. And did you take the boss down to the wharf?

A. Yes, I did.

Q. By the boss whom do you refer to?

A. Lee Chuck.

Q. What time was it when you took Lee Chuck down to the wharf that night?

A. After six o'clock.

(Testimony of Lee Choy.)

Q. When you got down to the wharf, what did you do?

A. When I arrived down the wharf the steamer just alongside the wharf, we went upstairs. We waited there until they put on the gang-plank.

Q. That is you were there when the boat arrived. Did you go on the boat at that time?

A. The boss and I went on the boat.

Q. After the passengers had come off?

A. I get on the boat before the passengers left.
[391—311]

Q. Who did you see on the boat?

A. I saw a lot of passengers on the boat there and I went down in the kitchen. I asked those cooks downstairs, waiters, whether they want anything, potatoes or anything like that.

Q. Did the cooks or waiters give you an order for any potatoes or vegetables or anything of that sort at that time?

A. He told me—I was busy at that time, he told me to come around there again.

Q. Well, after you had had this talk with the cook or waiter what did you do?

A. Came on shore,—the wharf.

(Recess.)

Q. And after you came to the wharf, where did you go?

A. When I got on shore I waited a little while, and the boss came off and then I took him home.

Q. Took him home?

A. Drove him home, drove him to the store.

(Testimony of Lee Choy.)

Q. What were you driving, what kind of machine? A. Dodge machine, touring car.

Q. Belonging to the company for which you worked? A. Yes, belonging to the company.

Q. About what time was it that you took the boss home? A. About 7 o'clock.

Q. And after you had taken him home what did you do?

A. I took half a dozen canned mile home to my house.

Q. Where is your house? [392—312]

A. Vineyard and Cunha Lane.

Q. And when you had taken this witness' mile home did you stay there for any length of time?

A. As soon as I left the condensed mile home I told my wife I am going down to the boat.

Q. And did you go down to the boat? A. Yes.

Q. And did you—by the boat to which you have referred you mean the "President Wilson" do you?

A. Yes, "President Wilson."

Q. How did you go down to the boat the second time? A. I got the street-car going down.

Q. When you had taken the boss home in the Dodge car and gone to your house, how had you gone to your house? A. I walked home.

Q. As near as you can remember, Lee Choy, when was it, what time was it when you got down to the boat the second time? A. About after 7.

Q. Well, can you fix it more closely than that?

A. I could not say, I noticed it was after 7 o'clock, —because I didn't have no watch with me.

(Testimony of Lee Choy.)

Q. When you got down to the boat the second time what did you do?

A. Went on the boat and asked those passengers on the boat if they wanted anything, any goods, and at the same time I went down in the kitchen and asked the cook [393—313] if they want any stuff, they says no, they had a lot of stuff brought from Japan.

Q. Do I understand you to say you spoke to some of the passengers on the boat? A. Yes.

Q. What did you have in mind to sell to those passengers? A. Vegetables and Chinese stuff.

Q. Had you sold any to passengers on boats before? A. Yes.

Q. Each time when you went on the boat did you see Inspector Richardson, the man who testified here, a customs inspector? A. Yes.

Q. Where was he? A. At the step.

Q. At the after-end of the gang-plank?

A. The first time he was standing at the gate, near the gang-plank, there is a gate there. He asked me for my pass and I show him my pass and the second time I went down there he was there standing at the gang-plank.

Q. Do you know whether you showed him your pass the second time?

A. The second time I don't remember whether I showed him the pass or not, but I also saw the two officers standing at the gang-plank. They saw me too.

Q. By the two officers to whom do you refer?

(Testimony of Lee Choy.)

A. Wells, and another tall man.

The COURT.—Is he in the courtroom? [394—314]

A. Yes, these two.

(Indicating Mr. Wells and Mr. Stevenson.)

Q. These two gentlemen sitting at the end of the front row there? A. Yes.

Q. When you went on the boat the second time did you see the same cook or steward as you had spoken to the first time there? A. Yes, same cook.

Q. Now aside from the passengers to whom you have spoken, trying to sell them something, and this cook or steward, to whom you spoke, did you speak to anyone else on that boat either time you were down there? A. Talking to passengers.

Q. But aside from the passengers and the cook to whom you spoke about selling some vegetables, did you speak to anyone else, any Chinese people particularly?

A. Well, others besides those passengers, I asked them if they wanted potatoes or anything like that, vegetables, fruits.

Q. You mean you just spoke to a few people whom you happened to meet about vegetables and fruits? A. Yes.

Q. Well, is there any person, any Chinese person, aside from the cook or steward, to whom you spoke about selling goods for the boat itself, whom you can remember, to the extent of being able now to identify or say who they [395—315] were?

(Testimony of Lee Choy.)

Mr. PATERSON.—Objected to as already answered.

The COURT.—Objection overruled.

A. I know he was working on the boat, I could not say whether he was a cook or waiter, I seen him working on the boat.

Q. Did you go anywhere on the boat excepting this kitchen where this steward was?

A. Came upstairs on the deck and asked the passengers.

Q. During either time you were on that boat did you come into the room where there were Chinese persons dressed as though they were resting from their work?

A. I went in the room, there is a lot of Chinese waiters all dressed up in the room, I asked them if they wanted potatoes or anything like that.

Q. At either time you were on that boat did you go into any first-class stateroom?

A. No, I have no right to go in those rooms.

Q. About what time was it that you left the boat on this second visit?

A. When I arrived home it was after 8 o'clock.

Q. When you arrived home it was after 8; about how long after 8?

A. I did not look at the time; I think it was about after 8.

The COURT.—What time after 8?

The INTERPRETER.—He says he could not say.

The COURT.—It might be 1 minute after 8 or

(Testimony of Lee Choy.)

59 minutes, [396—316] after eight, and still be after 8. A. I could not say.

Q. How did you get from the boat home the second time you went home?

A. When I came down to the wharf the street-car just passed, and I walked up here to Fort Street, Fort and King Street, by the First National Bank there, I got my car there, took street-car.

Q. When you left the boat the second time, reaching home sometime after 8, was that the last time that you were on that boat?

A. Yes, that was the last time.

Q. And when you left the wharf on that occasion was that the last time that you were at that wharf that night? A. The last time.

Q. Well, after you had gone home, how long did you stay there?

A. Didn't stay very long, go in the kitchen and got a towel, washed my face, then I told my wife, "I am going down to the country to-night."

Q. Well, after you washed your face and told your wife you were going down to the country, where did you go?

A. I came in town to Chin Tai's store.

Q. Who did you find at Chin Tai's store?

A. I saw Chin Tai and one of his working men in the store.

Q. Was that working man the man who testified here this [397—317] morning? A. Yes.

Q. As near as you can remember about what time was it that you arrived at Chin Tai's store?

(Testimony of Lee Choy.)

A. When I left my house I came down the little lane there, I saw a clock in the store that said 8:40.

Q. That is as you were leaving your house to go to Chin Tai's store?

A. I saw the clock in the lane.

Q. In the lane as you were leaving the house?

A. In the lane, not the lane where I lived but the lane down here, the second Cunha Lane, not the same lane where I live, the second lane.

Q. But before you get out into Vineyard Street?

A. There was two lanes, one Vineyard Street lane, leading mauka side, one Vineyard Street lane leading down to Kukui Street.

Q. Where you saw this clock, 8:40, you were only about a few hundred yards from your house?

A. On Kukui Street, between near the bridge there, I saw a store there and looked at the clock; it was about 10 minutes to 9.

Q. That would be 8:50 wouldn't it. Well, after you got down to Chin Tai's store and found Chin Tai and this clerk of his there, what did you do?

A. When I went in there I saw Chin Tai was inside the office writing, and I asked him if he wanted some eggs.

Q. You mean you asked him? [398—318]

A. I asked Chin Tai if he want some eggs. I told him I am going down the country, "Would you mind go along with me?" and he said, "All right, I will go."

(Testimony of Lee Choy.)

Q. Did you get an automobile to go down into the country?

A. Yes, I did, I telephoned for a machine.

Q. Where did you telephone to?

A. I telephoned to Smith Auto Stand, Chinese Auto Stand on Smith Street.

Q. And did a machine come to get you?

A. Yes.

Q. And who was the driver of that machine?

A. Won Tim.

Q. The man who testified here yesterday?

A. Yes.

Q. And you and Chin Tai got into the automobile and went at once to the country with Won Tim, is that right? A. Yes.

Q. About what time was it when you left Chin Tai's store to go down to the country?

A. After 9 o'clock.

Q. How long after 9? A. I could not say.

Q. It was about, near what time?

A. I know it was after 9 o'clock. I didn't have any watch with me.

Q. How long do you think you were in Chin Tai's store? A. I think about 10 or 15 minutes. [399—319]

Q. How long had it taken you to get from the place you saw the clock to Chin Tai's store?

A. A few minutes.

Q. Going down to the country, how did you sit in the automobile? A. In the back seat.

Q. You and Chin Tai in the back seat? A. Yes.

Q. And the driver alone in front? A. Yes.

(Testimony of Lee Choy.)

Q. What kind of car was it? A. A "Hudson."

Q. Going down to the country did you drive rapidly or at a moderate rate of speed?

A. Well, we didn't go very fast; didn't go very slow.

Q. And on your way down to the country did you go over the Pali and directly down to Kaneohe without stopping anywhere? A. No.

Q. Did you stop anywhere on the way down?

A. No, we stopped at Hoon Wai's place.

Q. But no place on the way, is that it? A. No.

Q. When you got to Hoon Wai's store what did you do?

A. I told the driver to wait for us outside, and I called Chin Tai go inside the house.

Q. Did you go inside the house? [400—320]

A. Yes, I went on the veranda and at the same time Hoon Wai came out from his office and meet us at the veranda.

Q. As near as you can remember what time was it when you got down to Hoon Wai's store?

A. 10 o'clock, to Hoon Wai's house, not store, about 10 o'clock.

The COURT.—About 10 o'clock, you say?

A. About 10 o'clock.

Q. That you arrived at Hoon Wai's House?

A. About 10 o'clock.

Q. Where is Hoon Wai's house?

A. It is a little lane going in his place, the car stopped right outside of his house.

Q. With respect to the courthouse at Kaneohe where is his house?

(Testimony of Lee Choy.)

A. Past Koolau Court House there is a line of stores there, past the Japanese blacksmith-shop, there is two store there, on one side a Chinese store and on one side a Japanese store, and right in that lane there.

Q. Did the driver come in the house with you or did he stay in the automobile?

A. The driver did not come in.

Q. Did not come in? A. Did not come in.

Q. Well, when you went into Hoon Wai's house what happened? What did you do?

A. He asked us to sit down for tea and says, "You fellows [401—321] come in pretty late."

Q. Did you have tea?

A. Yes, he brought the tea out and we drank some tea.

Q. Well, when you had your tea what else did you have?

A. We went in the office and I asked Hoon Wai,—we came in for some eggs and some chickens, and asked if we could have some; he says, "Yes, you could have some."

Q. Did you get any eggs? A. Yes, I got some.

Q. How many eggs did you get?

A. Counted 300 eggs.

Q. What did you do with those 300 eggs?

A. Put them in a box.

Q. What did you do with the box after you put the eggs in it?

A. After we put the eggs in the box we went out to get the chickens.

(Testimony of Lee Choy.)

Q. And what did you do, get some chickens?

A. We got chickens while Hoon Wai was getting the sack, in order to let the chickens stick their head out while I was taking eggs to the machine.

Q. How many chickens did you get?

A. Six chickens.

Q. How much did you pay Hoon Wai for the eggs? A. I paid one dollar for 20 eggs.

Q. Bought them at the rate of 20 for a dollar?

A. Yes.

Q. Did you pay him anything for the chickens?
[402—322]

A. Well, I give him fifty dollars, I owed him some money before; I gave him fifty dollars and told him we would fix up the difference later on.

Q. When you got your chickens and eggs what did you do with it, where did you put them?

A. I brought it down to Chin Tai's place.

Q. Where did you put them? How did you bring them to Chin Tai's place?

A. I put the eggs in a machine in the back seat and the chickens, the driver tied it on behind on the running-board.

Q. What is it, the tire or the running-board?

A. The extra tire on the running-board, the fender.

Q. How long a time, as near as you can remember, was it that you stayed there at Hoon Wai's place at Kaneohe that night?

A. I think about three-quarters of an hour or one hour, counting those eggs, things like that.

(Testimony of Lee Choy.)

Q. So that you took your chickens and eggs on the automobile, stayed there for three-quarters of an hour or an hour. Did you come back to town?

A. Yes.

Q. Did you come straight back from the Pali to Chin Tai's store? A. Yes.

Q. Did you stop anywhere on the way coming back from Hoon Wai's place to Chin Tai's store?

A. No. [403—323]

Q. When you got back to Chin Tai's store did you keep the automobile or dispose of it?

A. I paid him off and he went off.

Q. How much did you pay him?

A. Six dollars.

Q. And then what did you and Chin Tai do?

A. Took the chickens inside there and untied the chickens, got a box, weighed them on the scales first, and then put them in a box, put the chickens in a box.

Q. What did you do with the eggs?

A. Leave them in there on the same box.

Q. Well, about what time was it that you got back to Chin Tai's store?

A. I don't remember about what time, I didn't look at the clock.

Q. Have you any idea? Can you give us your best recollection?

A. I don't remember. I think it was about after 11 o'clock.

Q. Do you know what time it was that you left Hoon Wai's place?

(Testimony of Lee Choy.)

A. We left in town here about after 9 o'clock, when we arrived there I think about 10 o'clock. I didn't look at the time we left there. I don't know what time it was.

Q. But you stayed there about an hour or three-quarters of an hour? A. Yes.

Q. Well, what else did you and Chin Tai do in the store [404—324] there besides putting the chickens and eggs away?

A. He was in his office and I was outside waiting for him.

Q. Well, did you eat any eggs in there?

Mr. PATTERSON.—Objected to, on the ground it is leading.

The COURT.—He is allowed to put leading questions after apparently exhausting the witness' memory.

A. Well, I heard the clock strike, that time I looked at the time, it was 12 o'clock, I told Chin Tai I was going home, he say, "You wait, I will boil some eggs; have some eggs before you go."

Q. Did you cook any eggs? A. Yes.

Q. You remember that was some time after midnight? A. Yes, it was after 12.

Q. Now do you know where Chin Tai got these eggs you cooked, whether they were taken out of the box that you brought back from Kaneohe or whether they were other eggs he had in the store?

A. Those eggs we brought in down from Kaneohe.

Q. You cooked some of those? A. Yes.

(Testimony of Lee Choy.)

The COURT.—How many did you cook?

A. Well, I don't know how many. I know I ate three or four eggs.

Q. All right, after you got your midnight lunch there what did you do?

A. I told Chin Tai I was going home, and Chin Tai rang [405—325] for an automobile, and he rang for the automobile but could not get the automobile, then I rang the automobile.

Q. Then you rang for one automobile first, first you could not get it, or Chin Tai did and then you rang up an automobile stand?

A. Chin Tai rang first, could not get any machine, then I rang and got one.

Q. What did you get this machine for?

A. Oh, for the purpose of taking Chin Tai home, he was going home.

Q. Well, did the automobile come for you?

A. Yes, I got the machine.

Q. And did you and Chin Tai get in the machine and go somewhere? A. Yes.

Q. About what time was it that you and Chin Tai left his store there, in this automobile, about what time? A. That was after 12 o'clock.

Q. Well, it was after 12 o'clock you had had your eggs. Can't you say about how long after 12 o'clock?

A. I did not watch the clock all the time, but I could not say either what time, the only time I saw the clock was when the clock struck 12.

Q. And after the clock struck 12 then you had

(Testimony of Lee Choy.)

your eggs, and as soon as you were through with your eggs you went out that night?

A. After we had our eggs then we telephoned for the [406—326] machine.

Q. All right. After you got in this machine who were in the car? A. Chin Tai and myself.

Q. And the driver? A. Yes.

Q. Where did you go?

A. I want to go home. Chin Tai says we take a ride around before we go home.

Q. And when Chin Tai said, "We will take a ride around before we go home," where did you ride to?

A. We drove on Hotel Street, then there is a road near the Palace ground, Chin Tai said, "We better turn down this way, this is good road," and I said, "It is up to you," and we turned down the road next to the Palace.

Q. Turned down Alakea Street?

A. Richard Street.

Q. Where did you go then?

A. Came down Richard Street around the waterfront and up Fort Street.

Q. Now before you came up Fort Street, before you got to Fort and Merchant Street, did you stop anywhere along the waterfront or do anything except to go straight along the route you have told us about? A. No, did not make any stop.

Q. All right. When you came up Fort Street what happened?

A. When we came out Fort Street, near Mer-

(Testimony of Lee Choy.)

chant Street, as the machine passed us, Chin Tai was sitting on the right-hand [407—327] side of the seat, in the back seat, he put his head out and said, "Hello, Mac."

Q. You mean to say as the machine passed you or as you passed the machine?

A. We passed their machine.

Q. Going up Fort Street you overtook another machine, and what's his name, Chin Tai, called out, "Hello, Mac," is that right? A. Yes.

Q. Had you noticed who was in that machine before Chin Tai called out, "Hello, Mac"?

A. No, I did not know.

Q. Well, after Chin Tai called out, "Hello, Mac," what happened?

A. I heard someone say, "Stop."

Q. Well, after that?

A. Chin Tai opened the door and got off the machine, went to watch McDuffie, McDuffie came toward our machine. They met half-way.

Q. What did you do? What else happened?

A. Wells came over to the machine, pointed at me and says, "This is the Chinaman."

Q. What did he point at you?

A. He say, "Well, this is the man."

Q. Well, did you get out of the machine at all?

A. And afterward he told another man that come and take me over to their machine, and ask the lady to recognize me. [408—328]

Q. When you got over to the machine you saw that woman, did you?

(Testimony of Lee Choy.)

A. When I went to their machine and one of the officers flashed a light on me, on my face, and they asked the Japanese if he knows me, the Japanese says, "No, no savee."

Q. Was that Japanese this Japanese who sits here, Kamihara? A. Yes.

Q. Well, what else happened?

A. Then they asked this woman.

Q. What did she say?

A. What she said that time I don't know.

Q. And by this woman you mean the woman who sits here, Mrs. Alapa, who has testified in this case?

A. Yes.

Q. And when you were brought before that woman then and she was asked if you were that man, is that the first time you ever saw that woman?

A. The first time I saw her.

Q. Well, after you had been shown the woman, and she made this response, which you don't know, what happened?

A. The officer put me on the machine with her.

Q. You sat down beside her?

A. We were sitting on the same seat, I was sitting on the right-hand side, she was sitting on the left-hand side.

Q. Was anybody else sitting on the left-hand side there [409—329] besides you and the woman?

A. The chief of detective in the middle,—the chief of detectives was sitting on the door.

Q. Were you sitting next to the chief of de-

(Testimony of Lee Choy.)

tectives, nearest to the chief of detectives, or was the woman sitting nearest to the chief of detectives?

A. The chief of detectives was sitting right alongside the woman.

Q. He was sitting out on one side of the door, and you two were on the back seat, isn't that what you said?

A. I was sitting on the right-hand side, the woman sitting on the left-hand side, the chief of detectives sitting on the door on the left-hand side, close to the woman.

Q. In that way you drove to the station, did you?

A. Yes.

Q. While you were sitting there next to the woman, and the chief of detectives sitting on the door, do you remember having said anything to the woman?

A. No, I have no reason whatever to say anything to her. I don't know her.

Q. Will you state that you did not state anything to her? A. No.

Q. You won't state it or you did not state it?

A. I did not open my mouth at all.

Q. Did you nudge her or move over close to her, particularly, or anything of that sort?

A. No, since I sit on the machine she move away from me. [410—330]

Q. Was anything said to you when you were taken into custody, there, put into this automobile with this woman, as to what you were being arrested for? A. No.

(Testimony of Lee Choy.)

Q. Well, when you were taken down to the police station what was done?

A. Billy Wells said, "Lock him up."

Q. Well, what happened?

A. They locked me up.

Q. Did you—Before you were locked up were you told what you were charged with, why you were being locked up? A. No.

Q. Where were you locked up, in the police station?

Mr. PATTERSON.—That is objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

A. The police station, then they took me down in a cell.

Q. Did you see this Japanese driver there when you got to the police station?

A. No, I did not see him.

Q. You don't know what was done with him?

A. I know the next morning, but that night I didn't know.

Q. How long were you kept in the police station there before you were let out?

A. Locked up down there since Wednesday night until Saturday noon. [411—331]

Q. You say you did not know what had become of this driver until the morning. Did you see him the next morning?

A. I saw him in the jail yard there. I saw him sitting alongside the guard and I was down on the bench, sitting on a bench.

(Testimony of Lee Choy.)

Q. At any time while you were locked up there in the police station did you ever say anything at all to this Japanese, Kawahara, who was also there?

A. I could not say anything to him because we were separated, he was sitting alongside the guard, I was walking along there, and the guard told me, "You had better stay away from this Japanese."

The COURT.—The question was, "Did you say anything to him"? A. No, I did not.

Q. Is it true or is it not true, as he testified, that you met him the next morning near the lavatory there and said to him, "You say that you don't know me, I will say that I don't know you." Did you ever say that? A. No.

Q. Did you ever meet him near the lavatory or anywhere else?

A. No, he is crazy. If I want to go to the toilet I get a key from the guard.

Q. You saw the Chinese woman who testified here yesterday, Tan Lee Shee, you saw her here yesterday morning, did you not?

A. Yes. [412—332]

Q. Did you ever know her before this case arose?

A. Yes, I know her before that, she was running a store. I used to go in her store and buy cigarettes.

Q. Where was her store?

A. Hotel Street, near Nuuanu.

Q. Aside from the times you may have seen her

(Testimony of Lee Choy.)

in the store as you came in to buy cigarettes, did you ever see her anywhere else?

A. No other place.

Q. Before this case arose did you know what her name was? A. I heard about the name.

Q. How long had you known her name?

A. I heard of her name when I saw her taking the stand here.

Q. My question is, before this case arose, when you used to go in and out there and buy cigarettes, did you ever know what her name is?

A. No, at that time I do not know what her name was.

Q. Did you know where she lived?

A. I do not know where she lived. I know before when she was running the store at Hotel Street.

Q. That is, did you know where they lived in the store at that time?

A. I don't know where they stayed.

Q. You don't know where they stayed even then?

A. No. [413—333]

Q. Have you ever been to the home of this Chinese woman?

A. Before that I didn't go, after that Billy Wells told me that I took some opium to her place, then I went to her place and asked.

Q. You mean after you were arrested Wells told you you had taken some opium to her place, when you were released you asked her whether she had said that or not?

(Testimony of Lee Choy.)

A. Yes, I went to ask her whether I had taken opium there or not.

Q. You know whether you had taken opium there or not? Did Wells say she had said you had taken opium there? A. Yes.

Q. You went to ask her whether she said it or not, didn't you?

A. I went up to this Chinese woman's place and asked her if her place was searched, she say, "Yes," and she asked me who told me that, I told her, "Billy Wells."

Q. This was after you were released? A. Yes.

Q. Well, I am not talking about that time. I want to know, before your arrest, were you ever at her house? A. No.

Q. And before your arrest did you know where she lived? A. I did not.

Q. I take it from your testimony then that the testimony [414—334] given by this woman to the effect that you employed her to go on this boat and get opium is entirely false?

A. It is false. I do not know her.

Q. Did you ever have anything at all to do with smuggling opium into the Territory or any other place? A. No.

Cross-examination.

(By Mr. PATTERSON.)

Q. Do you know what opium is?

A. I saw opium in China. I did not see any in these Hawaiian Islands.

Q. You saw opium in China? A. Yes.

(Testimony of Lee Choy.)

Q. Did you see these opium cans herein court?

A. Yes, first time I ever see now.

Q. Did you ever see an opium pipe in the Hawaiian Islands?

A. No, I don't know, I don't smoke opium, I don't go near the opium joints.

Q. You have never seen an opium pipe then, is that correct?

A. I saw in China, but not in Hawaiian Islands.

Q. You have never seen an opium horn?

A. I saw the opium horn they used to sell in the Chinese stores.

Q. You never saw a pair of opium scales?

A. I saw the scales. [415—335]

Q. Here or in China?

A. I saw scales in China, also Hawaiian Islands, in the Chinese drug-store.

Q. You never did see any opium at all in the Territory of Hawaii? A. No.

Q. Do you know opium when you smell it?

A. I don't know. I never smelled opium before. I could not tell.

Q. Did you ever hear that there are certain Chinese in Honolulu that smoke opium?

A. Well, even when I heard it I don't pay any attention.

Q. This opium business around Honolulu is a big mystery to you, is that correct?

A. Well, I don't pay any attention to opium at all.

(Testimony of Lee Choy.)

Q. Did you ever know anyone who was arrested for smoking opium?

Mr. ULRICH.—Objected to.

The COURT.—I will permit this question.

A. I saw 40 or 50 Chinamen up in court here the other day, arrested while I was up here.

Q. Do you know Tom Leong, this woman's husband, the woman that testified?

A. Yes, I know him when I see him.

Q. Did you see him up in court here the other day with these other 60 people?

Mr. ULRICH.—Objected to. Suppose he knows the man when [416—336] he sees him.

A. Well, I did not see him. There was a big bunch here. I could not say which was which.

Q. You do not know whether he was here or not then, is that correct?

A. No, I do not know, only what I heard, all these people are arrested for opium.

Q. You know Tom Leong when you see him?

A. Yes.

Q. When did you last see him?

A. Well, I don't know when was the last time I saw him, but I saw him on the street.

Q. Did you see him out at his house?

A. I saw him when I was arrested, when I went up to the house to get the woman for a witness.

Q. Who did you go up to the house with?

A. I went up there to find his house, finally I found his house.

Q. Who went with you?

(Testimony of Lee Choy.)

A. I went there myself.

Q. Was Chin Tai along? A. No.

Q. Did you drive the car up there?

A. No, I walked up there; that was on Sunday.

Q. You walked up? A. Yes.

Q. And did you—Do you own an automobile?

A. At the present time I have not got any automobile. [417—337] Before I had automobile, before.

Q. Whose automobile did you drive down here this morning?

A. That is my brother's machine.

Q. What is the name of your brother?

A. Ah Chan.

Q. How do you spell that last name?

A. C-h-a-n.

Q. You have used that automobile to-day?

A. I always use that automobile, he don't use it until in the evening, he take country runs.

Q. You don't own any interest in that automobile?

A. That machine was mine before, when I quit the rent service business I went to work and I turned the machine over to my brother, who is paying the note now. He is paying the note.

Q. Who to?

A. That machine I bought from the American-Hawaiian Garage, and when I turned it over to him he is paying the note now. I transfered the machine over to him.

Q. When?

(Testimony of Lee Choy.)

Mr. ULRICH.—I am going to object, if the Court please. The broadest latitude—

The COURT.—What bearing has that upon the case?

Mr. PATTERSON.—I will withdraw the question at this time. I will take it up later.

Q. Where were you born?

A. Born in the Hawaiian Islands.

Q. Did you go to China at some time during your life? [418—338]

A. I went to China twice.

Q. When was the first time?

A. When I first went to China I was very small. My mother took me to China and stayed there 9 years, 9 or 10 years.

Q. The second time?

A. And the second time I went to China, came back here, was about 7 years ago.

Q. And you are 26 years old now?

A. Twenty-six years old next month, December.

Q. So when you made your second trip to China you were about 19 years old, is that correct?

A. Either 18 or 19, I am not sure.

Q. How long did you stay on that trip?

A. The second time when I went to China I stayed there not quite one year, then I came back to Honolulu. It was about 7 years ago when I came back.

Q. Did you go to school in Honolulu? A. Yes.

Q. What school did you go to?

A. Went to night school first.

(Testimony of Lee Choy.)

Q. Did you ever go to the public schools?

A. No.

Q. When you got back from China the second time you were about 9 years old, and you did not go to the public schools, is that correct?

A. When I first came back here I was over 10 years old. I went to Iolani school. [419—339]

Q. Is that one of the public schools?

A. No, that is not a public school.

Q. Who runs that school? A. Bishop school.

Q. For how long did you go there?

A. One year.

Q. Then where did you go to?

A. Frank Damon's school at Nuuanu Street, before.

Q. For how long? A. Just a few months.

Q. Did you ever go to any other school?

A. I have been at the school at Kaimuki, Honolulu School for Boys, now H. M. A., and stayed there six months.

Q. What grade were you in there?

A. Either third grade or fourth grade, I forget that.

Q. What other school did you go to?

A. That is all.

Q. What night school did you go to?

A. St. Mary's School, Palama.

Q. What is the name of that school?

A. St. Mary.

Q. How long did you go there?

A. One or two months at night school.

(Testimony of Lee Choy.)

Q. Which was the last school you went to?

A. Kaimuki, the last one.

Q. That is the Honolulu Military Academy?

A. Well, they call that place Honolulu School for Boys.

Q. How old were you when you left that school?
[420—340]

A. I don't remember.

Q. Did they speak English in that school out there? A. A lot of Chinese boys there.

Q. It is an English school though? You are taught English out there?

A. English school.

Q. The instructors do not talk to you in Chinese, they talk to you in English, don't they?

A. They speak to me in English, sometimes they don't understand they get another student there to interpret.

Q. You can talk English, can't you?

A. A little bit.

Q. Now, you can understand what I am saying now?

A. Some of it I understand, some I don't.

Q. If I asked you how old you are in English do you understand that?

The COURT.—Do you understand that?

Q. How old are you, Lee Choy?

A. (Witness speaking in English.) Twenty-six.

Q. Where do you live? A. I live Cunha Lane.

Q. Where? A. Number 4.

(Testimony of Lee Choy.)

Q. What kind of a house? A. Two houses.

Q. Two houses. How many rooms?

A. My house one room, another house a different fellow live. [421—341]

Q. Tell the jury what kind of a house you lived in.

A. Two houses. I lived one side, another man lived another side.

Q. How many rooms in that house?

A. One bedroom.

Mr. ULRICH.—We do not dispute the man can speak English. He can understand Chinese better. Is there any reason for further demonstrating it.

The COURT.—I think it is proper in this state of the case.

Q. Now, when you went down to the boat that night you saw the passengers on there, and you say, —speak in English, if you do not understand me say so,—you saw the passengers down there the night you were on the boat? A. Oh, plenty.

Q. Did you try to sell vegetables to the passengers? A. You mean I sell to passengers?

Q. Yes? A. No.

Q. Did you try to sell? A. Yes.

Q. You tried? A. Yes.

Q. What kind of passenger, haole passengers?

A. No, Chinese.

Q. Did you try to sell to haole passengers?

A. (Through Interpreter.) If they buy I would sell to them. [422—342]

(Testimony of Lee Choy.)

Q. Did you ask any haole passengers to buy that night?

A. (Through Interpreter.) No, I did not, they all come to shore.

Q. Did you ask Chinese passengers.

A. (Speaking in English.) Yes.

Q. Were there any passengers on that boat that night? A. Yes.

Q. How many? A. I don't know.

Q. You tried to sell them potatoes, is that right?

Mr. ULRICH.—How long is this cross-examination going to continue without the interpreter. I think this man has some difficulty in answering though he may be able to understand very well. The testimony should come to the jury in the best form. I think the jury now know about how well the man understands English. I think the purpose of the examination so far has been made, and that the examination may now continue in Chinese.

Mr. PATTERSON.—I want to take issue on that.

The COURT.—I will permit a few more questions. Inform the witness if he has any difficulty at all in understanding to make it known.

(Interpreter talks to witness.)

Mr. PATTERSON.—I would like to say at that time I would like to conduct the full cross-examination of the witness in English.

The COURT.—I am not ruling on that at this time. What I may do in the future I will not now undertake to state. [423—343]

(Testimony of Lee Choy.)

Q. So you tried to sell some of the Chinese passengers some potatoes that night?

A. (Witness continues in English.) I asked them if they want apples, oranges, corn, cabbages.

Q. Potatoes? A. Oh, any kind.

The COURT.—Vegetables of any kind, is that what you mean? A. Yes.

Q. You did not sell any at all? A. No.

Q. How long did you talk to the cook?

A. Oh, not too long.

Q. When you first went down there did you go right down to the cook's room?

A. No, I went on top of steamer, then I went down.

Q. Where was the cook?

A. Oh, down the room.

Q. Your room? A. At the steamer.

Q. In his own room? A. I don't know.

Q. Was he inside the bedroom laying down, or what was he doing?

A. Oh, plenty men there.

Q. What was he doing? [424—344]

A. Well, I don't know what these are doing.

The COURT.—I am inclined to think now that is sufficient, Mr. Patterson.

Mr. PATTERSON.—May it please the Court, I am strongly in favor of conducting the cross-examination of this witness in English.

The COURT.—That may be, Mr. Patterson—

(Testimony of Lee Choy.)

Mr. PATTERSON.—I think that the witness has shown himself able to speak in English. In other words, we have gone along here fairly well at least, asking and answering questions in English. I maintain that if the jury gets the question direct and the answer direct from the witness they are doing a lot better than through an interpreter.

(Argument.)

The COURT.—Do you want to testify in Chinese or English from now on?

WITNESS.—I would rather speak in Chinese because I know better in Chinese. Some of them I don't know.

The COURT.—I think you have examined in English sufficiently to give the jury some idea or knowledge of his ability to speak and understand the English language. That is the only purpose in admitting it. The objection will be sustained.

(Adjourned until 9 o'clock A. M. Thursday, November 16, 1923.) [425—345]

In the United States District Court in and for the
Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

(Testimony of Lee Choy.)

On Thursday, November 16, 1922, at 9 o'clock A. M., all parties being present as before, the following further proceedings were had and testimony taken:

(Jury all present.)

LEE CHOY, the defendant, resumed the stand and continued his testimony as follows: (Through the official Chinese Interpreter.)

Cross-examination (Continued).

(By Mr. PATTERSON.)

Q. Who cooked the eggs that night that you arrived at Chin Tai's place? A. Chin Tai.

Q. What did he cook them in?

A. I do not know how he cooked it in. After the eggs were cooked he brought it outside.

Q. What kind of kettle,—cooked in a pan or kettle? A. That I don't know.

Q. Did you have anything else except eggs?
[426—346]

A. Beer, light beer.

Q. Near beer? A. Near beer.

Q. It was not home brew, was it, Lee Choy?

A. No, it came in a bottle.

Q. Were these eggs fried?

A. Half-boiled eggs.

Q. You had beer and boiled eggs then? A. Yes.

Q. About what time of the night was it you were eating these boiled eggs? A. After 12 o'clock.

Q. How long after?

(Testimony of Lee Choy.)

A. I could not say near what time. I know it was after 12. I didn't look at the time.

Q. Chin Tai said you ate half a dozen eggs, is that correct, he said you cooked a dozen eggs? A. No.

Q. How many did you cook?

A. I don't know how many he cooked.

Q. Well, about how many?

A. I don't know how many, I know I ate a few of them.

Q. And did you take them out of the box?

A. I saw they took the eggs from the box.

Q. Who took them out, Chin Tai? A. Yes.

Q. That is the same box you brought back from Kaneohe? [427—347] A. Yes.

Q. He had to open the box to get the eggs out?

A. The box came open, didn't nail up.

Q. This Chinaman that works in Chin Tai's store, he said that he counted the eggs the next morning and there were 300, he must have been mistaken?

A. I don't know whether he mistaken or whether Chin Tai told him that 300 eggs.

Q. But he said he counted them?

A. I don't know; I didn't see him count.

Q. But if he counted 300 eggs in the box you made a mistake because you and Chin Tai took out some the night before, didn't you?

A. Well, that part I didn't have nothing to do with. Chin Tai and I fixed up the price for the eggs.

(Testimony of Lee Choy.)

Q. If this Chinaman testified that there were 300 eggs counted by him in that box the next morning, he was mistaken because you and Chin Tai had eaten part of them, hadn't you?

A. Well, that I don't know, whether he counted or not. When I arrived at the store that night I told Chin Tai there were 300 eggs in there.

Q. How were these eggs packed over at Kaneohe?

A. Packed in a box.

Q. Just loose?

A. Loose, I had some rice husks in it.

The COURT.—Rice paddy? A. Rice husks.
[428—348]

Q. What kind of box was this?

A. A square box, China box.

Q. How big is the box?

A. Pretty big size, box is square.

Q. Was it as high as this desk? A. No.

Q. About how high was it, half as high or two-thirds?

A. About this high? (Indicating.)

Q. Who put the rice husks in there?

A. Awai put them in.

Q. Were the husks in that box before you put the eggs in it?

A. Well, he had some of them in a box, put some eggs in covered with husks, then eggs, then husks,

Q. Where did you get this box that you put the chickens in? A. From the store.

(Testimony of Lee Choy.)

Q. Did you ever see that box around there?
What kind of a box was it? A. A long box.

Q. Was it a new box?

A. It was not a new box, an old box.

Q. Had it ever been used to have chickens in it before? A. That I don't know.

Q. Did you nail slats on top of the box?

A. Yes, I did.

Q. So the chickens could get fresh air, is that the reason you did that? [429—349]

A. Well I would not say the chickens get fresh air or not. I only say so the chickens could not get out of the box.

Q. Did you see that other box that Chin Tai's employee has been talking about, that was regularly kept there for the purpose of putting chickens in?

A. No, I did not see that.

Q. Did Chin Tai say anything about putting them in the box? A. No, he did not.

Q. Did he help you to get the box to put the chickens in? A. No.

Q. Did you nail these slats on top of the box?

A. Yes, I did.

Q. Chin Tai was there all the time?

A. He was in his office.

Q. He is pretty well acquainted around that store, isn't he, Chin Tai?

A. Well, he ought to know because that is his own store.

(Testimony of Lee Choy.)

Q. How long has he been doing business in that store, to your knowledge?

A. He bought that store from other people, he was there pretty long.

Q. How many years?

A. I don't know, I didn't put that to memory.

Q. As long as ten years?

A. I don't know how many years. [430—350]

Q. As long as ten years; was it more than ten years or less than ten years, according to your best judgment?

A. I don't know; I don't remember.

Q. Has it been five years?

A. I don't know whether five years or three years.

Q. Has it been as much as three years?

A. I don't know how long he has been in that business, I know that store been there a long time.

Q. Has he been there as much as a month?

A. More than a month.

Q. More than a year?

A. I have been dealing with him over a year, about a year.

Q. Was he in that store before you went to China the last time?

A. That I don't know; I don't remember.

Q. Now you say you drive a truck for Ah Chew Brothers? A. Yes.

Q. And how much do you make a week?

A. Twenty dollars a week.

(Testimony of Lee Choy.)

Q. And how much money do you make on an average every month out of your commission business?

A. Well, sometimes ten, sometimes five dollars, sometimes thirty or forty dollars, sometimes nothing.

Q. How much did you average last year every month, according to your best recollection?

A. I was not working there last year.

Q. When did you start in on this commission business? [431—351]

A. Since I worked to Ah Chew Brothers.

Q. How long has that been?

A. Well, since I have been working there.

Q. When did you start to work for them?

A. I know I am working there 8 or 9 months, I don't know what month I start to work.

Q. About how much have you made during this eight or nine months on your commission business?

A. That I don't know, I didn't keep that in record, sometimes I get more, sometimes I get less.

Q. To the best of your recollection how much every month,—I am not asking you to be definite.

A. Well, sometimes I get thirty, sometimes I get ten, sometimes I get nothing.

The COURT.—What would it average?

The INTERPRETER.—He could not answer that question.

A. I do not keep that in the record, so I could not say how much.

(Testimony of Lee Choy.)

Q. Have you averaged more than a dollar a month during these last seven months?

A. It is more than a dollar a month, but I can't say how much it is.

Q. Has it been less than thirty dollars a month?

A. Yes, sometimes less than thirty, sometimes more than thirty, sometimes forty or fifty; sometimes five dollars.

Q. For the 7 or 8 months has it been less than thirty dollars on an average? [432—352]

A. I could not say because I did not keep that in a record.

Q. Has it been less than a thousand dollars a month during the last six or seven months?

A. I got nothing to show.

Q. You do not know whether it has been less than a thousand dollars a month then, is that right?

A. I could not say because I did not have that in a record.

Q. You could not say whether it has been less than a thousand dollars a month?

A. Well, I could not say because I have nothing in the record to show whether over a thousand dollars or less than a thousand dollars.

Q. You want this jury to believe you do not know whether you made a thousand dollars a month or not out of the commission business during the last seven months, is that correct?

A. It could not go up as far as a thousand dol-

(Testimony of Lee Choy.)

lars a month. As I say, some months fifty and sixty dollars a month, or less.

Q. Would you say you made sixty dollars one month?

A. Sometimes sixty dollars a month, sometimes thirty dollars a month, sometimes nothing.

Q. What month did you make sixty dollars?

A. Well, I don't know, I didn't keep that in the record. I don't know which month.

Q. Did you make sixty dollars one month? [433—353]

Mr. ULRICH.—I think that has gone far enough.

The COURT.—Q. It is not possible for you to say about how much you averaged per month? You are not expected to give the exact figures.

A. I would not say because I was not sure about how much; that is why I did not want to say.

Q. We don't ask you to be sure. About how much, sixty dollars, twenty-five dollars, fifteen dollars, does it average per month?

A. You can count it up. I will tell you about how much a month I make, some months I make more, some months I make less.

The COURT.—Are you able to tell us how much you made during the month of May?

A. No. I could not say how much I make during May, because I did not keep a record of it, sometime I make more, sometimes I make less.

Q. That is so as to each and every month since you have been in that business?

(Testimony of Lee Choy.)

A. I could not tell how much I make a month; I did not keep that in the record.

The COURT.—You say you did not keep a record. How are you able to tell us what you did on some months, that you took in thirty or sixty dollars, if you did not keep a record?

A. I know some months I make that much, but I don't [434—354] know exactly what month.

The COURT.—But you know that you made thirty dollars or fifty dollars, or whatever it might be, for any month. How do you know that if you kept no record? For what reason are you able to remember it?

A. Well, I could not say which month, some month I make some money, sometimes I make more, sometimes less, sometimes sixty, sometimes thirty.

The COURT.—You kept no record of any month?

A. No.

The COURT.—I am inclined to think, Mr. Patterson, that is about all.

Mr. PATTERSON.—Q. How much did you make in the month of October?

Mr. ULRICH.—Objected to—

The COURT.—I will permit that question, being last month. A. I don't remember.

Q. Did you make as much as thirty dollars in the month of October?

A. I make some money. I could not say how much, about how much.

The COURT.—Can you remember how much you

(Testimony of Lee Choy.)

made on that transaction, selling eggs and chickens to Chin Tai, from Kaneohe?

A. I make \$13.60; \$10 eggs, \$3.60 chickens.

Q. Then you paid out six dollars for the automobile, or did you make that over and above?

A. After. I make over six dollars after paying [435—355] the automobile bill, less six dollars automobile, then make over six dollars.

The COURT.—\$13.60, out of which you paid six dollars for the automobile? A. Yes.

Q. Did you have any other commission transaction during the month of October?

A. I don't remember.

Q. Do you remember any of your transactions in September?

Mr. ULRICH.—Objected to—

A. I had transactions with Awai in September.

Q. Now what did you buy that time?

A. Chickens and chicken eggs.

Q. What did you buy that time?

A. I remember on September I bought 250 eggs from him and I did not pay him.

Q. But were any chickens bought this time?

A. Yes.

Q. How many chickens were there?

A. Over ten chickens.

Q. How did you go over after them?

A. Go down on machine?

Q. Won Tim's machine? A. I think it was.

Q. Are you sure it was?

A. Chickens and chicken eggs, are sure.

(Testimony of Lee Choy.)

Q. Was it Won Tim's machine you went over in that time? [436—356] A. I think it was.

Q. Are you positive that it was?

A. I don't quite remember, sometime I go down there, drive my brother's machine, go down there, sometimes I ride Won Tim's machine.

Q. Did you go in the day-time or night-time?

A. I went down there mostly in night-time, because I go down there sometimes day-time, on Sunday.

Q. This time did you go in the day-time or night-time, in September, when you got 250 eggs and ten chickens?

A. Night-time, over ten chickens, not ten chickens,—over ten.

Q. How many over ten? A. Twelve chickens.

Q. What did you say ten for awhile ago?

The INTERPRETER.—He said over ten.

Q. Now you are sure there were exactly 12, are you? A. Yes.

Q. You do not know who drove you over that night?

Mr. ULRICH.—Objected to, if the Court please, this is not along the lines of the direct examination.

The COURT.—I think he might put the question as to whether or not he is not sure. I think the question is substantially correct.

(Question read by the reporter.)

A. I don't remember, sometimes I go down on his machine, sometimes on my machine, sometimes I go down there with any other machine. [437—357]

(Testimony of Lee Choy.)

Q. You testified yesterday that your brother used the automobile during the night-time? A. Yes.

Q. Do you use it sometimes in the night-time yourself, then? A. Yes.

Q. Now this trip we are talking about now, was that the last trip you made to Kaneohe before the night of the 18th of October? A. Yes.

Q. Did you ever do any business with anybody else besides Awai in the commission business?

A. No. Well, I have sometime, but very few.

Q. Who else?

A. Before I had some transactions down Kailua, but now I haven't any.

Q. Who did you have a transaction with down in Kailua?

A. Yes, sometimes when I got time I go around Kailua and sold other things beside that.

Q. Who did you buy eggs and things from in Kailua? A. Rice plantation.

Q. Who owns it?

A. Wing Lee, Wong Kong, Wong Min Chow, Tai Pung.

Q. These men all live at Kailua?

A. All different plantations, rice plantations down Kailua.

Q. Are they down there now? [438—358]

A. Well, I have not been there for a long time.

Q. How long?

A. A long time. I don't remember how long.

Q. A year?

(Testimony of Lee Choy.)

A. I don't remember whether one year or more than one year. I am sure I have been there before.

Q. Are you sure it is more than one year?

A. I don't remember more than one year or less than one year.

Q. You don't remember?

A. I know before I used to go down there every time.

Q. To your best recollection is it less than a year or more than a year ago?

A. Well, I have been there; I haven't been there lately. A few years before I used to go down there every time.

Q. To get eggs and chickens? A. Yes.

Q. To sell on commission? A. Yes.

Q. Are these Chinamen down at Kailua now, that you have given me the names of?

A. I think they are down there, but I am not sure whether they are or not.

Q. You testified a while ago you have only been in this commission business since you have been to work in Ah Chew Brothers. How is it you were buying eggs over a year ago from these men down in Kailua? [439—359]

A. Well, when I working for Ah Chew that is Ah Chew Brothers business, whatever I do outside is my business.

Q. You testified this morning you had been in this commission business since you went to work for Ah Chew Brothers, didn't you?

A. Well, that transaction I had down there was

(Testimony of Lee Choy.)

before that, and stopped about over a year. I did not do that business when I was in the rent service business. After that I went to Ah Chew's place to work, and went in the commission business again.

Q. So that since you went to work for Ah Chew and in the commission business you haven't done any business with these Chinamen? A. No.

Q. How long were you in the rent service business before you went with Ah Chew Brothers?

A. Over a year.

Q. And you did not do any commission business while you were in the rent service business?

A. No.

Q. So then a minute ago you didn't know it was more than a year or less than a year since you seen these Chinamen down there in Kailua. Can you now give us a more definite idea as to when you did business with them?

A. I don't remember. I know it is many years ago, when I was hauling rice down there.

Q. Who were you working for when you were hauling rice [440—360] down there?

A. Ah Chew Brothers rice plantation.

Q. And when was that?

A. Well, that was a long time ago, that is when I first worked there. Now that is the second time, I go back to work for him again.

Q. Before you were a chauffeur did you work for Ah Chew Brothers?

A. Yes, working for Ah Chew Brothers.

Q. Before you became a chauffeur? A. Yes.

(Testimony of Lee Choy.)

Q. What was the nature of your employment at that time? A. Driving automobile truck.

Q. That is when you were hauling rice back and forth from the plantation?

A. Yes, hauling rice from the country down to town, here.

Q. Now, when did you first become impressed with the idea that you were going over to Kaneohe on the night of the 18th?

A. I remember when I was arrested that night.

Q. Did you make up your mind on the afternoon of the 18th to go to Kaneohe that night for eggs?

A. I make up my mind on that day.

Q. What time of the day?

A. Make up my mind to go five o'clock on that day.

Q. You were sure you were going then at 5 o'clock?

A. Yes, I make up my mind 5 o'clock to go down there. [441—361] The boss tell me the steamer arrive that day. I could not go that time because of the steamer would arrive.

Q. Said you could not go at 5 o'clock?

A. That I could not go until I got through with my work.

Q. Who told you that, Lee Chuck?

A. He told me that. Well, I was going to quit at 5 o'clock, he told me not to quit 5 o'clock, he says, because steamer coming in.

Q. Then you would have gone over at 5 o'clock, would you? A. Yes.

(Testimony of Lee Choy.)

Q. Had you made arrangements for an automobile to take you over? A. No.

Q. Had you made any arrangements with Hoon Wai? A. No.

Q. Had not said a word to him? A. No.

Q. You had not mentioned the fact you were going to go over there on that night?

A. I did not.

Q. He did not know whether you were going or not? A. No.

Q. He did not know whether you were going that night or whether you were going to go there a week or two weeks after that, is that correct? [442—362] A. No.

Q. That is the only time you were over to his house in October? A. Yes.

Q. You went over there to get eggs that night?

A. Yes.

Q. Did you go over to get chickens too?

A. I have already stated two or three times I went down to get chickens and chicken eggs.

Q. But Hoon Wai did not know you were coming?

A. I already answered that question. I told you—

Q. I am asking you again.

Mr. ULRICH.—I think he has answered that.

A. I have already answered the question.

The COURT.—When was the last time you had seen him before the 18th?

A. I saw him in the month of September.

(Testimony of Lee Choy.)

The COURT.—The occasion you have already told us about? A. Yes.

The COURT.—And between that time and the 18th you had not seen him? A. No.

Mr. ULRICH.—The objection is renewed.

The COURT.—I think we understand now he had not seen him between whatever the date was, and the 18th of October.

(Argument.)

The COURT.—In pursuance of his answer that he had not seen him since the 18th we can assume Awai did not know [443—363] he was coming down on the 18th.

Q. This night when Lee Chuck told you you couldn't go that night—I withdraw the question. Lee Chuck then told you you could not go at 5 o'clock, there was a steamer coming in from China?

A. Lee Chuck did not tell me that I could not go. I make up my mind to quit 5 o'clock; we did not quit 5 o'clock, and Lee Chuck he told me there was a steamer coming in from China.

Q. When he told you that what did you decide to do?

A. I did not do anything. He instructed all the employees in there we got to work late on account of a steamer coming in.

Q. When he told you this did you still have your mind made up to go to Hoon Wai's place at Kaneohe after you were through work?

A. Well, I did not make up my mind that time, then I go out unexpected.

(Testimony of Lee Choy.)

Q. What do you mean by saying you went out unexpected?

A. Well, I go down there when I feel like it.

Q. And you felt like it this night about 9 o'clock, before you went over to Chin Tai's place?

A. Yes.

Q. Then, as I understand it, there was no particular reason for you to go on this particular night, any other night would have done?

A. Well, sir, I go down there whenever I feel like it, no matter what date. [444—364]

Q. Then you could just as well have gone down on the 17th or 19th?

A. Well, whenever I felt like going I do.

The COURT.—Why not answer the question, you could just as well have gone down on the 17th or 19th? A. I go whenever I like.

Q. And there was no prearranged meeting between you and Hoon Wai that night or any other night? A. No.

The COURT.—Had he gone to bed when you arrived there on the evening of the 18th?

A. No, he came out on the verandah when I arrived there.

Q. Was he already dressed up?

A. Well, he had clothes, pants.

Q. What was this date when you were over in September, if you remember?

A. I don't remember.

Q. You don't know whether it was the 30th of September or first of September?

(Testimony of Lee Choy.)

A. During that month of September I was down there twice.

Q. Well, what date was the last trip down there?

A. I don't remember that date.

Q. Was it as early as the first or as late as the 30th of the month?

A. I did not keep a calendar with me; I could not say what date. [445—365]

The COURT.—On which trip did you get the 250 eggs and 12 chickens, the first trip or the second trip?

A. The last time. I remember that trip, the 250 eggs and 12 chickens because I did not pay him that time.

Q. And about what date, according to your best recollection after all this talk, was it that you made that last trip on which you got the 250 eggs and the 12 chickens?

A. I don't remember because I did not carry the calendar in my pocket. I didn't want to say the date. I am not sure. You might call me a liar.

Q. I am not asking you to be sure, I am not even intimating that you are a liar. I just *what* the date, whatever it was, the 1st, 10th, 20th or 31st, whatever it was?

A. I remember the month was September.

Q. But you would not say whether you made the last trip to Kaneohe on the 1st of September or the 30th of September or any particular dates in between that or on or about any particular date in between that?

(Testimony of Lee Choy.)

A. I would not say what date, because I did not have the calendar in my pocket, with me.

Q. How much did you pay for those 250 eggs?

A. Twenty for one dollar.

Q. How much for the 250? A. \$12.40.

Q. You are sure about the forty cents? [446—366]

Mr. ULRICH.—Objected to. A. \$12.50.

Q. How much did you pay for the chickens?

A. 46 pounds.

Q. And how much did you pay for them a pound?

A. Sixty cents a pound.

Q. How much was that? A. About \$27.60.

Q. Now this night when you went over you paid him fifty dollars, didn't you?

A. Well, I paid him fifty dollars this last trip when I bought the 300 eggs.

Q. How much was your bill the last time?

A. Over forty dollars.

Q. Now I want you to be positive about that?

A. Yes.

Q. How much were the eggs worth, the last batch? 300 eggs, weren't there? A. Yes.

Q. And there were 24 pounds of chicken at sixty cents a pound? A. Yes.

Q. That is \$14.40, isn't it, making \$39.40 altogether. \$39.40 altogether, wasn't it?

A. Whatever you figure it at.

The COURT.—\$15 and \$14.40 is \$29.40.

Q. How much were those last 300 eggs?

(Testimony of Lee Choy.)

A. I told you over ten times that it was 300 eggs, [447—367] fifteen dollars.

Q. \$29.40 altogether? A. Yes.

Q. And you paid Hoon Wai fifty dollars on account on the night of the 18th? A. Yes.

Q. How much was the balance you owed him then? A. Owed him over ten dollars yet.

Q. Do you know exactly how much?

A. You can figure it out.

Q. The only account you had with him then is for the \$40.10 in the first instance, and \$29.40 in the second, \$69.50, is that correct?

A. Altogether these two transactions \$69.50, over the fifty dollars.

Q. So you owe him \$19.50 then? A. Yes.

Q. Did you talk about that that night over there on the 18th?

A. I told him I would give him, when I would give him the fifty dollars and we would fix the different up later on.

Q. Did you mean that you still owed him \$19.50?

A. No, I didn't tell how much, I owed him the balance. I told him I would give him the balance later on.

Q. Did you figure up that night that you owed him \$69.50, while over there at Hoon Wai's place?

A. Yes, I figured it myself. [448—368]

Q. That night over there?

A. That night I know that I owe him some money.

Q. You knew that you owed him \$19.50 after you had paid him the fifty dollars?

(Testimony of Lee Choy.)

A. That night when I was at Hoon Wai's place I know I owed him some money, I did not know exactly how much. When I came back I figured out I owed him \$19.50 more.

Q. Did you figure that out that night?

A. When I was in the police station that night locked up.

Q. Did Hoon Wai tell you how much the chickens were, how much the eggs were, going out that night?

A. No, he did not.

Q. Didn't mention the price at all?

A. No. I know the price, the last time when I was down there.

The COURT.—How was he able to figure out the amount in the police station that night, the exact amount, when he didn't know how much the chickens weighed?

Mr. ULRICH.—They weighed them that night when they got back.

Q. You figured this up down to the police station, now?

A. That night I could not sleep, so I began to figure out the amount.

Q. Now, after the hour of 5 o'clock on the night of the 18th when did the thought first come to your mind again [449—369] to go to Kaneohe that night? A. After 5 o'clock.

Q. After 5 o'clock, when did it first come to your mind again to go to Kaneohe that night?

A. Well, I go that night since I felt like it.

Q. I am asking you, after 5 o'clock when did it

(Testimony of Lee Choy.)

first come to your mind to go to Kaneohe? Did you make up your mind you would go after you got there, after you got back from the boat, or after you went to the boat, or after you got back from the boat the last time?

A. I make up my mind when I quit work that night when I reached home pretty early so I thought we will take a trip down there.

Q. When you say "we" who do you mean?

A. Myself.

Q. When you were at home that night, after your last trip to the boat, you decided you would go down to Kaneohe? A. Yes.

Q. Then at that moment you had a fixed intention in your mind to get an automobile and go to Kaneohe? A. Yes.

Q. And where did you go when this fixed intention got in your mind?

A. I went and walked down to Chin Tai's store.

Q. How far is it from your home to Chin Tai's store? A. Not very far away. [450—370]

Q. How many blocks?

A. I don't know how many blocks. I walked through a little new street down to his place.

Q. How long would it take you to walk down there?

A. I don't know how many minutes to get down to his place, won't take very long.

Q. Does it take one minute or 20 minutes?

A. Well, I didn't hold a watch in my hand, when

(Testimony of Lee Choy.)

I walked down. If I says four or five minutes you might call me a liar.

Q. According to your best recollection it would take about four or five minutes?

A. Maybe more than that, if I looked at the time, if I had the time in my hand.

Q. You didn't see any clock going down that night?

A. Yes, I saw a clock on Kukui Street.

Q. On Kukui Street?

A. A clock in Japanese store on Kukui Street.

Q. What time was it? A. Ten minutes to 9.

Q. You remember that exactly?

A. Yes, I saw the time.

Q. During the day or during the night-time on the 18th of October did you look at the clock at any other time?

A. Why, I see the clock every time but I don't know what is the time. [451—371]

Q. You saw the clock plenty times, but you don't remember any other time of looking at it to see the the particular time?

A. Well, I saw the clock in the morning, eight or nine o'clock, sometime in the afternoon, one o'clock. I always see the clock. Sometimes in that store when I passed.

Q. You don't remember looking at the clock at any particular exact time at any other time on this particular day?

A. I looked at the time for lunch, and our quitting time in the afternoon.

(Testimony of Lee Choy.)

Q. Did you look at it at the house, before you left your house to go to Chin Tai's store that night?

A. No, I did not.

Q. When you left the house to go to Chin Tai's store then you did not know what time it was, did you? A. No.

Q. Did you know about what time it was?

A. I know it was after 8 o'clock.

Q. Did you know it was before 9 o'clock?

A. When I reached on Kukui Street I saw a clock in a Japanese store that was 10 minutes to 9, and I say to myself it is pretty early yet.

Q. But I am asking you about the time you were back in your house before you saw the clock at the Japanese house on Kukui Street. Did you know it was before 9 o'clock then?

A. I would not say. I did not look at the time. [452—372]

Q. You cannot say whether it was 9 o'clock?

A. Or 10 o'clock.

Q. Until you got in the Japanese store?

A. I did not look at the time at my house. I think it is about 8 o'clock. When I reached Kukui Street I saw ten minutes to 9.

Q. And then you went over to Chin Tai's store?

A. Yes.

Q. Is Vineyard Street,—what street is close to where you live on Vineyard Street?

A. Between River and Nuuanu.

Q. And it is anyhow six or seven blocks from your house to Chin Tai's store, isn't it?

(Testimony of Lee Choy.)

A. I didn't count.

Q. Well, you are pretty well acquainted up in that neighborhood, ain't you?

A. I am pretty well acquainted with a lot of other places. I am not a surveyor.

Q. You are not a surveyor? A. No.

Q. You have lived up there, and Ah Chew Brothers is there on Nuuanu Street close to where you live? A. He was on Fort Street.

Q. Do you know those streets in between?

A. Yes, I do.

Q. How many blocks was it, how many blocks is it from your house to Chin Tai's place?

Mr. ULRICH.—We object to that, if the Court please. [453—373] Distances are not capable of being measured by blocks in that neighborhood.

The COURT.—I don't think it could be very intelligible anyway, blocks are so irregular in size.

Q. Tell us how you went to Chin Tai's place. Where did you go from your house. Tell us exactly the road or route from his house to Chin Tai's place. All right, you left your house that night to go to Chin Tai's store?

A. I left my place, came out of Cunha Lane, across Vineyard Street, then in another Cunha Lane, into Kukui Street, then, into Kamanuwai Lane, Beretania Street, across Beretania Street, then straight down to Maunakea Street.

Q. From Beretania Street to Maunakea Street how many blocks is it? When you got to Beretania Street where did you go?

(Testimony of Lee Choy.)

A. Across the street, down to Maunakea Street.

Q. Did you not go along Beretania Street to Maunakea?

A. Beretania Street, across from Kamanuwai Lane, and across Beretania Street, then you get to Maunakea Street, then down to Chin Tai's place.

The COURT.—Can you give us some idea about how long it took you to make that trip, your best judgment, five or ten minutes?

A. I would not say whether five minutes or ten minutes.

The COURT.—What is your best judgment? We would not expect you to be exact. [454—374]

A. About six or seven minutes.

Q. Have you a telephone in your house?

A. Yes, I have.

Q. How much house rent do you pay?

A. Fourteen dollars a month.

Q. Then when you got to Chin Tai's store, what did you do?

A. When I arrived to Chin Tai's store I saw Chin Tai in his office, and I asked Chin Tai if he want some eggs and he says, "Yes." I says, "I am going down to the country now, would you want to come along and take a ride," and he says, "Yes," and then I telephoned to a machine.

Q. How long have you known Chin Tai?

A. Known him for a long time.

Q. Is he a cousin of yours? A. No.

Q. You don't belong to the same Chinese family, or tong, or whatever it is, he belongs to—clan?

(Testimony of Lee Choy.)

A. No.

Q. Did you ever go out riding with Chin Tai before this time? A. Yes, Sometimes.

(Recess from 10:30 A. M. to 10:45 A. M.)

Q. And then you and Chin Tai got in the automobile and went to Kaneohe? A. Yes. [455—375]

Q. The driver stayed out in the car all the time over there?

A. Yes, he was sitting in his machine.

Q. Did Hoon Wai come out to the machine at all?

A. I did tell you he didn't come out.

Q. When did you tell me that?

A. Yesterday, when you questioned me.

Q. Did you—he didn't come out when you were leaving, or didn't come out when you got there?

A. No, he did not.

Q. He didn't talk to the driver at all?

A. Whether he talked to the driver or not, I didn't see.

Q. You didn't hear him? A. No, I did not.

Q. You were there all the time, weren't you, with him? A. Yes.

Q. And if he had talked to the driver you were in a position to hear him?

A. He did not talk to him. I didn't hear.

Q. Now, you say it was 6 o'clock that night when you first begin to figure on going down to the boat?

(Testimony of Lee Choy.)

A. Yes, I didn't say 6 o'clock. My boss told me the boat arrived after 6 o'clock.

Q. What did you do between 5 and 6?

A. I was in the back-yard, inside of the warehouse.

Q. Was you working all that time?

A. Working,—sitting down.

Q. From 5 to 6 o'clock you were in the warehouse all the [456—376] time?

A. I was walking in and out.

Q. At 6 o'clock what did you do?

A. I don't know whether it was 6 o'clock or what time it is when my boss told me to bring the machine out and we go down to the wharf.

Q. And up to the time you went down to the wharf you were working, is that correct?

A. Yes, working.

Q. What kind of an automobile did you go down to the wharf in, a Dodge? A. Yes.

Q. And you drove down with him? A. Yes.

Q. And what time did you get down to the wharf? A. After 6 o'clock.

Q. How long after?

A. That I don't know, I didn't have a watch with me.

Q. Was it closer to 6 or closer to 7?

A. It was dark; after 6 o'clock. It was dark that night.

Q. Was it closer to 6 or closer to 7?

A. It was between 6 and 7.

Q. Was it closer to 6 or closer to 7?

(Testimony of Lee Choy.)

A. It was after 6 o'clock. I didn't have no watch. I couldn't say.

Q. According to your best recollection was it closer to 6 or closer to 7 when you went down to the wharf? [457—377] A. After 6 o'clock.

The COURT.—Tell him to answer the question. Is he not able to tell us whether it was closer to 6 or closer to 7?

A. After 6 o'clock. It was dark.

The COURT.—How do you know it was after 6 o'clock?

A. My boss told me it was after 6 o'clock the steamer would arrive.

The COURT.—After 6 it would arrive?

A. Yes.

Q. You don't know what time it was yourself then, do you?

A. Well, I know it was after 6 o'clock; it was dark.

Q. It might have been after 7 too, might it not?

A. The boss told me it was after 6 o'clock the boat would arrive.

Q. But you personally do not know what time it was then? A. I didn't have no watch.

Q. Except what the boss told you? A. Yes.

Q. And how long did you stay down to the boat with the boss this trip? A. Not very long.

The COURT.—What do you mean by "not very long"?

A. I don't think it is half an hour when I left the store by the time I arrived the store. [458—378]

(Testimony of Lee Choy.)

Q. You do not think you were gone half an hour altogether, is that it?

A. Well, maybe half an hour or maybe over half an hour.

Q. But you say you do not think it was half an hour from the time you left the store with the boss until you got back to the store?

A. Well, I think it was about that time. Of course I didn't look at the time. I didn't have no watch with me.

Q. When you got down to the boat there what did you do?

A. I asked those people down there if they want anything.

Q. Did you go in through the hole where they take out the goods?

A. No, went to the dining-room.

Q. How did you get on the boat, did you get in through the hold where they unload and load freight?

A. On top.

Q. Where the first-class passengers come on and off?

A. Yes.

Q. Is that the way you generally go on that boat?

A. Yes.

Q. You deliver vegetables down there sometimes?

A. Every time.

Q. You deliver them up on the first-class passenger's gangway? [459—379]

A. Well, I take it on the boat both ways, sometimes through the gang-plank, sometimes through

(Testimony of Lee Choy.)

the hold. 'Whenever the hold is closed then I go upstairs.

Q. Did you open the hold this night up there?

A. That night I didn't deliver any goods. I don't know.

Q. As a matter of fact, don't these venders and peddlers go down there to the boat, don't they go in and out of the hold? A. No.

Q. They go up the first-class passenger—I will withdraw that. They go right up the same way the passengers come on and off? A. Yes.

Q. When you deliver a sack of potatoes you take them right up the first-class passenger gangway?

A. Sometimes when the hold is closed we take it upon the gangway.

The COURT.—That ought to be sufficient.

Q. This night when you got on the boat you went down below, is that correct?

A. I went downstairs to the dining-room.

Q. And what time did you get back to the store after the first trip?

A. I don't know; I didn't look at the time.

Q. Where did you eat dinner that night?

A. In the store. [460—380]

Q. Who with? A. With the employees.

Q. And what time did you have dinner?

A. We have no particular time, sometime after 4, sometime after 5.

The COURT.—On that particular occasion. Tell us about what time, if you can't give the exact time. A. About 5 o'clock.

(Testimony of Lee Choy.)

Q. You took the boss back to the store about 7 o'clock, didn't you?

A. I don't know whether 7 or after 7, I didn't look at the time.

Q. Was it near 7?

A. As I told you, I didn't have the time; I didn't look at the time.

The COURT.—Do you carry a watch? A. No.

Q. Yesterday when your attorney asked you when you got back you said 7 o'clock. Why is it you was so certain yesterday and not certain today?

A. I says about 7 o'clock, I didn't say exactly the time, I says about 7.

Q. But you can't say now it was about 7, is that right?

A. Well, I stated the same as I testified yesterday, 7 o'clock or after 7, or about 7 o'clock.

Q. All right, let that go. Did your boss go down to the boat on that night again?

A. I don't know whether he went down or not.
[461—381]

Q. You don't know that? A. No.

Q. You didn't see him go down there, did you?

A. No, I did not.

Q. When you got back to the store that night at about 7 o'clock you and the boss separated, didn't you?

A. As soon as I took him home that evening I drove the machine in the yard, in the back, in the yard there, I came in the store and got a half

(Testimony of Lee Choy.)

dozen tins of milk, then I left the store and went home.

Q. Were you through for the day, as far as the boss was concerned, then? A. Yes.

Q. You put away the automobile, didn't you?

A. Yes.

Q. And there was nothing said between you and the boss about going back to the boat that night?

A. No, I got my regular order. I don't have to talk to him again.

Q. Did you tell him you were going down to the boat again that night?

A. I did not. I didn't have to tell him.

Q. Then you went home? A. Yes.

Q. With the six cans of condensed milk?

A. Yes.

Q. How long did you stay home?

A. I took the milk home, and left the milk in the kitchen, then I told my wife we had to go down to the boat again. [462—382]

Q. You told your wife you had to go down to the boat again? A. Yes.

Q. What did you have to go down for?

A. When I was first down to the boat there the man told me he is busy at that time, told me to come back again.

Q. But your boss and you never spoke about that at all?

A. No. Well, the boss he had his own business to attend to, and I attend to my business.

Q. You are working for the boss though?

(Testimony of Lee Choy.)

A. Yes.

Q. You were down there on his business that night, were you not? A. Yes.

Q. Did you inquire of—did you inquire of him whether,—or did he inquire of you whether you had obtained any orders while you were down there talking to the cook?

A. No, he did not ask me if I obtained any orders from there. I came up and told the book-keeper, that is all.

Q. You and he never mentioned that? A. No.

Q. Then you told your wife you had to go down to the boat. You were going down on your company's business, weren't you? A. Yes.

Q. How far do you live from the boss' store?
[463—383]

A. The boss' place is on Fort Street, my place on Vineyard and Nuuanu.

Q. Now, is it as far as from here to the Young Hotel? From your place to the boss' place?

A. Well, I could not say. It is not very far. I did not measure the steps.

Q. To your best judgment is it as far to your place, from your place to the boss' store as it is from here to the Young Hotel?

A. His place is three blocks to my place. His place is on Fort Street, on Vineyard Street near River Street, that is my place.

Q. When working for Ah Chew Brothers do you have charge of the automobile when you go out on these trips selling stuff?

(Testimony of Lee Choy.)

A. Whenever I got any goods to deliver I take the truck.

Q. Does anybody else run this truck besides you?

A. Yes, some other working men.

Q. And it never occurred to you to get the automobile to go down on this second trip?

A. The second trip I went down there I went down there on the street-car.

Q. I asked you why didn't you take the boss' car down there on the second trip?

A. I took the street-car, is better. I did not have to take the machine back to the boss' place again.

Q. Was you going to stay all night down on the ship? [464—384]

A. Well, no, as soon as I find out if they want any goods or anything like that I come back.

Q. If you had gone down there and found out that they wanted any goods, then you would have had to come down to the boss' place to get the goods and take them down there on the car, is that right?

A. No, I did not have to deliver on the same night, because the boat leaving the next day, I can deliver that on the next day.

Q. What time did the boat leave on the next day?

A. After 10 o'clock.

Q. When you went down there on this second trip you never had any idea of going to Kaneohe that night at all, did you?

A. Well, I go any time when I feel like it.

(Testimony of Lee Choy.)

The COURT.—Did you get any orders from the boat on this second trip? A. No.

Q. Did you ever get any orders from any boats on the President lines?

A. Sometimes I got orders, sometimes I do not.

Q. How long were you down to the boat this second trip? A. Not very long.

Q. Did you notice whether the *whole* which leads from the boat on to the wharf was open downstairs?

A. No, I did not pass that way. I did not see at all.

Q. You went downstairs, is that correct?

A. Yes. [465—385]

Q. Then you went clear down into the kitchen again?

A. Yes, through the adjoining room and into the kitchen.

Q. The deck on which the kitchen is situated would be about on a level with the wharf, wouldn't it? A. You have to go further down.

Q. To the kitchen? A. Yes.

Q. And you didn't look to see whether that hold was open which goes in just a little above the kitchen at all that night?

A. No, I didn't look, I didn't send any freight in there.

Q. You preferred to go on this first wharf, then by another stairs on to the boat then through the boat into the kitchen? A. Yes.

The COURT.—One point is not very clear to me. Perhaps it is not clear to the jury. Am I correct

(Testimony of Lee Choy.)

in understanding you to say when you went on the boat the first time you saw the cook or whoever it was that had charge of the potatoes, the purchasing of the vegetables, and he told you he didn't have time to attend to the matter at that time and he told you to come back later? A. Yes.

Q. Then when you went back later he sail he did not want anything? [466—386] A. Yes.

Q. Did you know this cook down there?

A. I knew him when I saw him.

Q. And he knew you were down there to sell vegetables and stuff? A. Yes.

Q. Did you talk to anybody besides a cook on that second trip?

A. I talked to several others, and asked them if they wanted to buy anything.

Q. Several other who?

A. Those people that working on the boat.

Q. You were just talking to people who worked on the boat?

A. Those people I asked them if they wanted to buy anything.

Q. How many of them did you ask?

A. Oh, I don't know how many, I didn't count them.

Q. Did you ask a hundred or did you ask two?

A. There is a bunch of them over there. I asked them if they did not want to buy anything. They says, "No."

Q. Where were they, down next to the cook's galley?

(Testimony of Lee Choy.)

A. Right outside the kitchen, inside the chief steward's room, and outside of the chief steward's room.

Q. Is that where you got the opium?

Mr. ULRICH.—Objected to, as the question is an improper one. [467—387]

The COURT.—Objection sustained.

Mr. PATTERSON.—I will withdraw the question.

Q. These were all working men down there that you talked to? A. Yes.

Q. And did you talk to anybody else besides them?

A. Well, when I came upstairs I saw some of the passengers; I talked to them.

Q. What nationality were these passengers?

A. Chinese.

Q. Were the—Did they appear to be Chinese peasants *of* the richer class of Chinese?

A. I am not a guardian for them; I don't know.

Q. Were they well dressed?

A. Common clothes.

Q. Were they up in the first-class passenger's compartments?

A. Well, they were standing on top the deck there. I don't know whether they are first-class passengers or not.

Q. Do you know the difference between the steerage and the first-class passenger department of the boat?

(Testimony of Lee Choy.)

A. Well, I can't tell the difference. They all dress up.

The COURT.—That is not the question. Do you know the difference between the quarters for the first-class passengers and the quarters for the steerage?

A. Yes, I can tell the difference. [468—388]

Q. Were they in the first-class passenger's quarters, the second-class or the steerage?

Mr. ULRICH.—Did you talk to people in these different sections of the boat?

Mr. PATTERSON.—Q. Were they passengers which belonged to those parts of the boat?

Mr. ULRICH.—Objected to.

Q. Were you in that part of the boat? These people that you saw in the part of the boat designed for first-class passengers, are they the ones you tried to sell vegetables to?

A. I could not say whether first-class passengers or second or steerage because they were standing on top.

Q. Where were they, in the first-class passenger space on the boat?

A. They were standing near the gang-plank, gang way.

Q. Do you know whether or not that is a part of the boat which is assigned to the first-class passengers? A. Yes.

Q. And these were the men that you tried to sell the vegetables to?

(Testimony of Lee Choy.)

A. Yes, I asked them if they wanted to buy anything.

Q. And what time of the night was it that you were talking to them?

A. That time I think it was about 7 or 8 o'clock.

Q. It was about 7 or 8?

A. Yes. [469—389]

Q. This was the second trip down there, was it?

A. Yes.

Q. You are not sure whether it was 7 or 8.

A. No.

Q. What time did you get home?

A. When I reached home I don't know what time. I didn't look at the clock.

Q. What is your best recollection on that?

A. I didn't know until I go out.

Q. Do you know now what time you got home from the boat, on the second trip, after looking at the clock in the Japanese store, when it was 10 minutes to 9? A. Yes, I know that.

Q. Well, then, what time was it?

A. After 8 o'clock.

Q. Now, when you and Chin Tai arrived home that night from Kaneohe and after you had eaten the eggs, what did you do?

A. Chin Tai,—I told Chin Tai I am going home.

Q. What did he say?

A. I told him I am going home, he told me, "Wait a minute and we go home together."

Q. Yes. Then what happened?

A. And he rang up for an automobile.

(Testimony of Lee Choy.)

Q. Who rang up?

A. Chin Tai rang for the automobile. He could not get one then he told me to ring up. [470—390]

Q. Who did you ring up?

A. I telephoned to a Japanese automobile.

Q. Who came up there?

A. A Japanese driver.

Q. What is his name?

A. A Japanese by the name of Masu.

Q. How do you spell that? A. M-a-s-u.

Q. Do you know this Japanese?

A. Yes, I know him.

Q. Have you seen him since then? A. Yes.

Q. Talked to him? A. Yes.

Q. Did you talk to him about this case?

A. Yes.

Q. How many times?

A. Twice. The first time I told him to go down to the lawyer's office.

Q. And did he go down? A. Yes, he did.

Q. Have you seen him since then? A. Yes.

Q. And what lawyer did you tell him to go down to see?

A. I told him to go down to Thompson's office.

Q. Were you there when he was there? [471—391] A. Yes, I was.

Q. Did you know him before this night?

A. Yes, I did.

Q. How long have you known him?

A. A long time.

(Testimony of Lee Choy.)

Q. Well, how long? A. Several months.

Q. What stand is he on? A. Vineyard Street.

Q. Close to your place? A. Close to my place.

Q. Is Kamihara on that stand?

A. I don't know this Kamihara; I don't know what stand he belongs.

Q. You know he is not on the same stand with Masu, do you?

A. That I don't know, whether he belongs to the same auto stand with him or not.

Q. Does Masu drive you often? A. Yes.

Q. How many times has he driven you this month? A. Several times.

Q. As many as ten times?

A. I don't know how many times, sometimes when I want to go home I call from in town.

Q. Is it less than ten times or more than ten times, according to the best of your recollection?

The COURT.—This month? [472—392]

Q. This month, yes? A. Eight or ten times.

Q. That is during the month of November?

A. Yes.

Q. Did he drive you in the month of October?

A. Yes.

Q. Several times? A. Yes.

Q. Every month he drives you several times, is that right? A. Yes.

Q. How about Won Tim, does he drive you quite a bit too? A. Yes.

Q. Several times during each month?

A. Yes.

(Testimony of Lee Choy.)

Q. Have you got any other drivers besides Masu and Won Tim?

Mr. ULRICH.—Objected to, if the Court please.

The COURT.—Objection overruled.

(Exception.)

A. Plenty of them.

Q. You have quite a bit of use for automobiles then, have you? A. Yes.

Q. Use one almost every day, I guess?

A. Yes, use every day.

Q. How many times a day do you use an automobile? A. I could not say, sir. [473—393]

The COURT.—The question covers hired automobiles.

Q. How many times do you employ an automobile, every day, once or twice?

A. Sometimes once a day, sometimes I do not use.

Q. Sometimes more than once a day, is that correct? A. Yes.

Q. You have four children and a wife to support, haven't you? A. Yes.

Q. Have to buy clothes for them? A. Yes.

Q. You have no source of income except from your commission business and your employment as truck driver for Ah Chew Brothers?

A. Yes, sir, that is all.

Q. Now, let us go back to Masu. You called him up then? A. Yes.

Q. And he came up to your place, did he?

A. When was that?

Q. On the night of the 18th?

(Testimony of Lee Choy.)

A. I told him to come down Manuakea and Hotel Street, the corner.

Q. Did he come? A. Yes, he did.

Q. Was Chin Tai in the store with you that night? A. Yes.

Q. And you both got in the automobile?

A. Yes. [474—394]

Q. And where did you go?

A. My intention was to go home.

Q. And what happened?

A. Chin Tai told me to take a ride before we go home.

Q. Did you take a ride? A. Yes, we did.

Q. And where did you go to?

A. Along Hotel Street, down this road, waterfront, up Fort Street.

Q. Down Hotel Street, is that correct?

A. Yes.

Q. Down which road?

A. Turn down to Richard Street.

Q. Which is Richard Street?

A. This street here. (Indicating.)

Q. On the other side of this building?

A. Yes.

Q. Why did you go down Richard Street?

A. Well, unexpected, Chin Tai says we will drive down this way.

Q. Did he say anything before that? A. No.

Q. You are positive of that? A. I am.

Q. Yesterday you testified that he said, "This is a good road down this way"?

(Testimony of Lee Choy.)

A. Well, that is what he says, it is a good road.

Q. You said a moment ago you were positive that he [475—395] said nothing but, “Drive down this way”?

A. Chin Tai told me, “Go down this way.” I told the driver to drive down this way.

Q. Chin Tai can talk, can’t he?

A. He can’t speak very much.

Q. Did he say this is a good road down this way, or did he not? A. I think he did.

Q. You don’t remember, you are not sure about that, are you? A. No.

Q. Then you went down Richard Street how far, go right down the waterfront and then up?

A. Fort Street.

Q. Did you see pier 7 down there that night?

A. Yes.

Q. Where is pier 7 with reference to the foot of Richard Street?

A. Past Richard Street, right below the Hawaiian Ice Works.

Q. You were going right straight down Richard Street, and when you got to the Ala Moana Road is it to the left or to the right?

A. Turned over to Fort Street and back.

Q. Did you see Kamihara’s car down there that night? A. I don’t know his car.

Q. And when you got down to Richard Street then you [476—396] turned to the right up as far as Merchant and Richards Street,—you turned to the right up as far as Fort Street, is that right?

(Testimony of Lee Choy.)

A. Yes, we were driving right straight along, turned up Fort Street.

Q. When you go to Fort and Merchant Street that is when Chin Tai hollered out, "Hello, McDuffie" or something like that? A. Yes.

Q. This happened right at the intersection of Fort and Merchant Street, didn't it?

A. Not intersection, right by the bank.

Q. Right by the bank? Was it on the mauka or makai side of Merchant Street?

A. Below Merchant Street on Fort Street, I stopped.

Q. On the makai side then? A. Yes.

Q. Was there quite a bit of talking going on there? A. I don't know; I didn't talk.

Q. They got you out of the automobile, didn't they? A. Yes.

Q. They didn't say a word to you, did they?

A. Billy Wells said, "This is the Chinaman" and then they took me out of the machine.

Q. Where did they take you?

A. Took me to the Japanese machine, they took me to the Japanese automobile, right alongside of the Japanese [477—397] driver, and some of the officers flashed a light on my face, and they asked the Japanese, "Is this the man" and the Japanese says, "No savee."

Q. The Japanese says what?

A. "No savee," I don't know.

Q. That is what he said, his exact words?

(Testimony of Lee Choy.)

A. Yes.

The COURT.—You mean the Japanese sitting over there? A. Yes.

Q. Kamihara? A. Yes.

Q. What did the woman say?

A. Then they called the woman to identify me, but what the woman says I don't know.

Q. You could not understand?

A. I did not hear her say anything.

The COURT.—She said something, did she?

A. I did not hear.

Q. You did not hear her say anything?

A. I did not hear her say anything.

Q. Did you hear Wells ask if you worked for Ah Chew Brothers, he asked you if you worked for Ah Chew Brothers, didn't he?

A. Yes, he did.

Q. That was before you got over to the woman and the Japanese? A. No.

Q. When was that he asked you that?

A. When I got off the machine he asked me.
[478—398]

Q. Before you got over to where the woman and the Japanese was? A. Yes, before that.

Q. Did you and Chin Tai go near the police station that night before you were arrested?

A. No.

Q. Didn't you and Chin Tai and this Japanese, on his machine, go down to the police station?

A. No.

(Testimony of Lee Choy.)

Q. You don't remember Chin Tai getting off the machine that night?

A. We got off and talked to McDuffie.

Q. Before you saw McDuffie that night, before you were arrested down on Merchant Street, didn't Chin Tai get off that machine in front of the police station? A. No.

Q. You are positive of that, ain't you?

A. Yes, I am positive.

Q. If you had—if he had done that you would have seen him, wouldn't you? A. Yes.

Q. Didn't you drive around the town with this man Masu that night in that machine?

A. No. You can call Masu over here.

Q. You didn't drive around with him?

A. Well, only that night down Hotel Street and Richard Street, the waterfront, down to Merchant Street.

Q. You did not take any other trip? [479—399]

A. No.

Q. Didn't you make a statement at one time you went out, at one time, you went out and saw lights in Chin Tai's house and woke him up to take a ride?

The COURT.—If counsel insists on it you ought to fix the time and place and so on.

A. No.

Q. And you didn't say anything to this woman when you got in the automobile that night?

A. No, I didn't know her.

(Testimony of Lee Choy.)

Q. You didn't have any conversation with Hara down there in the police station the next morning?

A. No, we was separated in the police station, in the jail yard down to the police station.

Q. You didn't get in Hara's machine with that woman down there on the night of the 18th at the wharf?

A. No.

Q. You were not out to Mrs. Tom Leong's place?

A. No.

Q. You did not have anything to do with this opium that was introduced in evidence here?

A. No, I didn't have anything to do with that. I don't know.

Q. If you had seen one of those cans you would not have known what it was that night?

A. The first time I ever seen them.

Q. Did you see anybody that you knew down there at the wharf that night? [480—400]

A. I know everybody down there.

Q. Everybody you knew?

A. Everybody I know them when I see them.

Q. Did you see Wells down there?

A. When I went down to the wharf that night he was standing by the step.

Q. Did you see Stevenson?

A. Yes, I saw him.

Q. Did you know these two men?

A. Yes, know them.

Q. How long have you known Stevenson?

A. I know him not very good.

Q. Where did you get acquainted with him?

(Testimony of Lee Choy.)

A. I know him but we don't talk to each other.

Q. Where did you see him, where did you ever see him before this night down there?

A. Sometime I saw him on the street, sometime I saw him down on the wharf, most of the time I saw him down on the wharf.

Q. How long ago was it you first saw Stevenson?

A. A long time ago.

Q. A year or two or how long?

A. I don't know, several months.

Q. When you were a chauffeur, is that the first time you saw him?

A. No, that time I don't know him.

Q. Where did you come in contact with him?
[481—401]

A. Most every time I see him standing down by the step, down by the wharf.

Q. Whenever these steamers would come in?

A. Yes.

Q. Did you know what his business was?

A. Yes, I know.

Q. Did you know what Wells' business was?

A. Yes, I know.

Q. What is their business? A. Detective.

Q. For what particular branch, if you know?

A. United States.

Q. You know they are members of the opium squad, don't you? A. Yes.

Q. And you have known that a long time, haven't you? A. Yes.

Q. Where did you find that out?

(Testimony of Lee Choy.)

Mr. ULRICH.—Objected to, what difference does it make. I object to it as immaterial.

The COURT.—Objection overruled.

A. I heard somebody tell me a long time ago.

Q. Did you and Chin Tai ever take a ride at night before this time? A. Yes, once in a while.

Q. Well, how often?

A. All depends, sometimes once in three weeks, sometimes— [482—402]

Q. Well, how often?

A. All depends, sometimes once in three weeks; sometimes once in one year, sometimes once in six months.

(Witness excused.)

**Testimony of Yasuhei Kamihara, for Defendant
(Recalled).**

YASUHEI KAMIHARA, recalled as a witness for the defendant, having been heretofore duly sworn, testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. Mr. Kamihara, you were arrested last night and five or six tins of opium were found on your person, isn't that a fact?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial, not within the issues of this case.

Mr. ULRICH.—I will give more of the circumstances of the arrest.

(Testimony of Yasuhei Kamihara.)

The COURT.—Put your question.

Q. You were arrested last night, taken into custody, and five or six tins of opium similar to the tins of opium which have been introduced in evidence were found on your person by Mr. Allen of the narcotic squad, isn't that a fact?

A. I don't know anything about it. I was not. I did not see that.

Q. Last night, together with Matsuda, a man who, is in this case, and Ogata?

A. No. Have you got any evidence to that? You must not [483—403] say that.

Cross-examination.

(By Mr. PATTERSON.)

Q. Where were you last night?

A. I came to my stand last evening about 7:30, and I sat on a chair in the back part of the stand watching the boys playing cards.

Q. Were you arrested last night?

A. No, they didn't have me arrested.

Q. Was there any police officers got after you last night? A. No, nobody came in.

Mr. ULRICH.—Information has come to that effect directly to me. I want to have an opportunity to call certain witnesses.

(Witness excused.)

The COURT.—I don't know what it has to do with this case.

Mr. ULRICH.—That opium, we propose to show, is opium similar to this opium, and is found in the

possession of this witness. If we can show this man has opium in his possession, to show that he is himself an opium smuggler instead of Lee Choy, —we have here a man who is in the business of smuggling possibly himself. Furthermore we find opium in the possession of this man, and can trace it down.

Mr. PATTERSON.—As far as I am concerned counsel can have [484—404] a continuation of this case until next year, if he wants to show this man has ever had any opium found on him.

Mr. ULRICH.—If we cannot support it by the evidence, that is a fact counsel can take his own advantage of. I have a right to go into that. The Court should I believe allow the jury to investigate that fact. If opium was found in this man's possession it is something that this jury should know.

The COURT.—We don't want to have to rule on a case out of time. We want to dispose of the case now before the Court.

Mr. PATTERSON.—If this man was found with these tins of opium,—he is counsel's own witness. I have not produced this man.

Mr. ULRICH.—I have produced this man for the purpose of showing a certain fact. He has not shown that fact. I am offering to prove that fact by other witnesses. Perhaps we cannot make good on that offer. It is most material, however, that may be presented to the jury. We have been trying to find out what has become of this opium.

This jury is interested in knowing the facts, and if it is a fact it can be used in evidence. I am not bound merely by his statement that he did not do it, or that he is not doing it or that he was not arrested. I am telling the Court that in perfect good faith. I have information which forces me, makes [485—405] me feel at liberty, to prove those facts.

The COURT.—You contend that the opium which Kawahara had is part of that first lot?

Mr. ULRICH.—Evidence which will make it a very probable fact.

The COURT.—You say that is your purpose?

Mr. ULRICH.—Yes, it is certainly reasonable. I ask for a continuance for the purpose of being allowed to produce further testimony before I rest, unless counsel wants to proceed with rebuttal, with the privilege of my putting this on later.

The COURT.—Understand, I am not holding that it is proper. I am willing to be shown.

With the understanding that he has a right to produce any such evidence that he may produce it later, even though the rebuttal is on or being put on. With that understanding I will let the rebuttal go in. I am not holding you have that right, but the opportunity of offering the evidence will be afforded and the Court will determine whether it is proper.

Mr. ULRICH.—We rest, with that privilege.

The COURT.—The Court holding in abeyance whatever ruling may be proper at that time, until

he is satisfied it is proper to offer such evidence, you may have an opportunity to investigate it and see whether he has or not. I don't see how that would interfere with your rebuttal, Mr. Patterson. [486—406]

Mr. PATTERSON.—The prosecution could go on with the rebuttal to-morrow.

The COURT.—I am holding that Mr. Ulrich has a right to offer any such evidence so that he may have an opportunity to investigate the matter. That part will remain open until to-morrow morning. If there is no more at that time we will proceed with your rebuttal, is that satisfactory?

Mr. ULRICH.—Yes.

Mr. PATTERSON.—Yes.

The COURT.—(To the jury.) Let no one approach you. If anyone should approach you on this case you report the matter to the Court. You will be excused until 9 o'clock to-morrow morning, to which time this cause stands continued.

(Continued to 9 o'clock A. M. Friday, November 17, 1922.) [487—407]

In the District Court of the United States in and
for the Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE CHOY,

Defendant.

(Testimony of Yasuhei Kamihara.)

On Friday, November 17, 1922, at 9 o'clock A. M., all parties being present as before, the following further proceedings were had and testimony taken:

(Jury all present.)

YASUHEI KAMIHARA, recalled to the stand for further examination, testified as follows:

Redirect Examination.

(By Mr. ULRICH.)

Q. Your auto stand is known as the Paradise Auto Stand on Vineyard Street, is that right?

A. Yes.

Q. Isn't it a fact that about a dozen tins of opium were taken from that stand the night before last?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

(Argument.)

The COURT.—We do not want to get outside of the facts.

(Argument.) [488—408]

The COURT.—Unless you claim he is the owner of that stand or is in charge of it. The objection is sustained. We will not go into that.

Mr. ULRICH.—We note an exception.

Mr. PATTERSON.—I wish to make a motion at this time. I move that your Honor instruct the jury to totally disregard this whole subject, this whole speech Mr. Ulrich has made just now, in regard to opium being found at the auto stand.

(Testimony of Yasuhei Kamihara.)

The COURT.—You will consider only the evidence, gentlemen of the jury. You are all intelligent men, and I have no doubt will understand you are to consider only the evidence. Proceed, Mr. Ulrich.

Q. You said yesterday that while you were at this stand you were watching the boys playing cards and no officers came there and no arrests were made. Do you still say that that is true?

Mr. PATTERSON.—I object to the question on the ground that it is incompetent, irrelevant and immaterial, and that counsel is trying to impeach his own witness. May it please your Honor he is examining him on a matter that is incompetent, irrelevant and immaterial for any purpose in this case, a collateral matter, and something that took place or is alleged to have taken place since the arrest. There will be no end to this trial if we are going to try another case.

The COURT.—The question was asked and answered [489—409] before. Objection sustained.

Mr. ULRICH.—Exception to the Court's ruling.

Q. You said yesterday you were not arrested the night before last and taken to the police station together with Matsuda and Ogata in an opium raid which was made on your stand,—

Mr. PATTERSON.—He has said nothing about an opium raid on his stand.

Q. I will put this question to you. Isn't it a fact that you went with certain detectives and officers from your stand to the police station to—

(Testimony of Yasuhei Kamihara.)

gether with about 12 tins of opium that had been taken at that stand at that ime?

A. No, I did no go there; there was no reason for me to be taken there.

Mr. PATTERSON.—I have objected to this question two or three times.

The COURT.—The jury have been instructed.

Mr. PATTERSON.—Counsel is arguing to the jury, and commenting upon evidence that is not admissible.

Q. Aside from yourself at that auto stand there was or were before this raid ever took place, also at that stand a Japanese driver named Matsuda and another Japanese driver named Okida?

Mr. PATTERSON.—Objected to, if your Honor please.

The COURT.—How does that involve this defendant? Objection sustained. Let us not go off on immaterial matters.

Mr. ULRICH.—Does the Court rule it is immaterial that [490—410] opium has been found in this stand?

(Argument.)

The COURT.—There is no occasion for argument, Mr. Patterson. I ruled in your favor. Exception allowed.

Mr. ULRICH.—The Court rules I cannot even find out who the drivers at his stand are?

The COURT.—I understand it to be along this same line, in regard to opium. He has already

(Testimony of William D. Allen.)

said he had nothing to do with opium, he did not have opium. I have very grave doubts even though he had admitted he had opium whether that would be pertinent in this case.

Mr. ULRICH.—If the Court makes that ruling I cant' pursue it further.

The COURT.—I think it is improper in view of the preceding questions.

(Witness excused.)

Testimony of William D. Allen, for Defendant.

WILLIAM D. ALLEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. What is your name? A. William D. Allen.

Q. You are one of the narcotic officers here in Honolulu, [491—411] are you? A. Yes, sir.

Q. Mr. Allen, on the night before last did you make a raid on or visit to a certain auto stand in Vineyard Street, known as the Paradise Auto Stand? A. Yes, I did.

Q. Did you find opium there?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—I will permit the question. It is preliminary. Objection overruled. I may find it proper.

A. We found some tins there we suspected con-

(Testimony of William D. Allen.)

tained opium. Analysis has not been made of them yet.

Q. You found some tins which you suspect contain opium? A. That is correct.

Q. Where are those tins?

A. They are in my possession sealed up.

Q. Downstairs? A. Yes, sir.

Q. Can you bring them here please?

A. I don't know whether I have the power to do it.

Mr. ULRICH.—I will ask that he be directed to bring one of those tins here.

Mr. PATTERSON.—Objected to.

The COURT.—It has not been determined whether it is opium. [492—412]

(Argument.)

The COURT.—I will determine before the witness leaves the stand,—that will be in pursuance to any further questions you bring out.

Q. Did you make certain arrests there that night?

A. We did.

Q. And you took certain Japanese to the police station did you not? A. Two.

Q. You are very sure you only took two to the police station? A. We only arrested two men.

Q. How many men did you take to the police station? A. I didn't take any.

Q. I am not asking you how many you arrested. I am asking you how many went to the police station.

A. Only two left with me to go to the police

(Testimony of William D. Allen.)

station. Those were the only men we had in custody, and I directed one of the men to take them over to the jail. Only two at that time.

Q. I am asking you how many, if you know, went to the police station, of the drivers from that stand?

A. There were only two men that got in the automobile, except my men.

Q. In what automobile.

A. In the automobile,—talking about taking these two men down to the station. [493—413]

Q. Was there any other automobile going to the police station? A. No.

Q. Who else was with you on that raid?

A. Mr. Wells and Mr. Stevenson.

Q. Anyone else? A. That is all.

Q. Was Suzuki of your office there?

A. We haven't anybody by that name employed by us.

Q. You have no one by that name, no man who works for you there regularly or indirectly?

A. He does not work for us at all.

Q. You know him? A. I know him; yes, sir.

Q. Don't you know that he has been down there in your office working with you from time to time?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—I will permit the question.

A. He comes in our office a number of times, the same as other persons. Not on our pay-rolls at all.

Q. He was not with you in this raid?

A. In the vicinity there.

(Testimony of William D. Allen.)

Q. Not with you? A. No.

Q. I will show you this tin of opium, and I will ask you if that is what you took from the stand, that kind of a tin? [494—414]

A. No, sir; the tins are similar except in size, the labels are far different from these labels, the labels are white, the other tins haven't any labels at all, some of them.

Q. Do you see this Japanese sitting here with this lady? A. Yes.

Q. Have you ever seen him before?

A. I have seen him around the court.

Q. Are you willing to swear on your oath that he wasn't on that stand there that night?

A. I cannot identify if he was there. There was one up there about 20 years old, another Japanese there about 30 or 35 was in there, I can't say as to who he was; if that was the one that was him, otherwise I can't identify him.

Q. You can identify the other two?

A. Only one. There was a young boy about 20 years old, and a Japanese that was older. If he was there I can't identify the way he was dressed, at the present time, because I did not pay any attention to him.

Q. Now, where did you get this opium?

A. From an automobile, Number 4066.

Q. All of it? A. The 12 tins.

Q. All 12 tins? A. All out of the one car.
[495—415]

(Testimony of William D. Allen.)

Q. What car?

A. Number 4066. Belongs to a fellow by the name of Matasuda.

Q. How many other automobiles did you see at that stand?

A. I believe three or four all told. We took two.

Q. And you say on your oath that only two of those Japanese from that stand went to the police station that night? A. Absolutely.

Mr. ULRICH.—I want the tins.

The COURT.—All right, bring them all up.

Mr. ULRICH.—S. Suzuki has not appeared.

The COURT.—Issue a bench-warrant returnable forthwith.

(Witness excused.)

Testimony of William Wells, for Defendant (Recalled).

WILLIAM WELLS, having heretofore been sworn, was recalled for further examination and testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. Mr. Wells, you were a member of the party that made this raid and got this opium on Vineyard Street the night before last? A. Yes, sir.

Q. You know Matsuda, don't you?

A. Matsuda?

Q. I don't mean Matsuda, I mean Kamihara?

A. Yes, sir. [496—416]

(Testimony of William Wells.)

Q. I am going to ask you on your oath now, Mr. Wells—

The COURT.—He is under oath.

Q. Whether or not you saw Kamihara on that stand that night? A. Kamihara?

Q. Yes, Kamihara? A. Yes, sir.

Q. I am going to ask you Mr. Wells whether or not Kamihara went to the police station with them, with your party when you took the other Japanese down? A. I did not.

Q. I am going to ask you whether he went to the police station at all, went with the rest of the party, or alone? A. No, sir.

Q. You mean he didn't go in your automobile, or he did not go in any other car in that party?

A. From the stand we came down here, and from here I went home. Mr. Stevenson and Allen took the two Japanese to the police station.

Q. This opium was found all in one automobile?

A. 4066.

Q. You took two men down, didn't you?

A. Yes, sir.

Q. One who was the driver of that car?

A. Yes, sir.

Q. And the other who was one of the other drivers on the stand? [497—417]

A. Yes.

Q. Why didn't you take Kamihara also, he was another driver right there?

Mr. PATTERSON.—Objected to as incompetent,

(Testimony of William Wells.)

irrelevant and immaterial, and calling for a conclusion and opinion of the witness.

The COURT.—I am very doubtful about the admissibility of that. I will permit the question. Objection overruled.

A. We had information that Ogawa had the opium.

Q. That was one of the other two that were arrested? A. Yes, sir.

Q. And you took in only him and Matsuda. Now, why didn't you take Kamihara?

Mr. PATTERSON.—I object.

(Argument.)

The COURT.—You have ample time and opportunity to make all the comments you may desire to make later on. I think he has answered your question.

Mr. ULRICH.—He said he had information.

A. Because we had information that Ogawa had the opium.

Q. No information against Kamihara? Why did you take Matsuda?

A. Found opium on his car.

Q. And you had information that Ogawa had something to do with it? A. Yes. [498—418]

Q. Aren't both Ozawa and Matsuda in custody now to the best of your knowledge and belief?

A. Yes.

Mr. PATTERSON.—I think we are getting into an issue that has nothing to do with this case.

(Testimony of William Wells.)

The COURT.—I am very strongly inclined to the opinion that this procedure is very irregular.

Cross-examination.

(By Mr. PATTERSON.)

Q. Mr. Wells, if Mr. Kamihara, the witness for the Government in this case had had opium in his car would you have arrested him? A. Yes.

Q. If you had heard he was dealing in opium would you have arrested him? A. Yes.

Q. The fact you did not arrest him was because you had nothing on him, is that correct?

A. Yes, sir.

Redirect Examination.

(By Mr. ULRICH.)

Q. Following up, you say that you had no information about Kamihara? A. No, sir.

Q. You did not consider the fact that he was right there at the same stand, and mixed up with another opium case, sufficient reason to take him down along, did you? [499—419]

Mr. PATTERSON.—Objected to.

The COURT.—Objection overruled.

Q. I am asking you,—you say you had something on these other two men and you found opium in an automobile there, and in the same stand with the automobile that Kamihara had? A. Yes, sir.

Q. You found Kamihara there? A. Yes, sir.

Q. You knew that Kamihara had been implicated in this other opium transaction to the extent that he had been the driver that carried the opium away from the boat in an automobile? A. Yes.

(Testimony of William Wells.)

Q. Didn't you consider those facts sufficient reason for taking him down and at least giving him some kind of an examination?

Mr. PATTERSON.—Objected to.

The COURT.—Objection overruled.

A. No.

Q. Did you have any talk with Kamihara when you were down there that night? A. No, sir.

Q. Who gave you the information that Ozawa was the man and not Kamihara?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. [500—420]

Mr. ULRICH.—Exception.

(Witness excused.)

**Testimony of W. T. Stevenson, for Defendant
(Recalled).**

W. T. STEVENSON, recalled as a witness for the defendant, having heretofore been sworn, testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. Were you on this opium raid that took place over on Vineyard the night before last?

A. I was.

Q. You know Kamihara here? A. I do.

Q. Did you see him there? A. I did.

Q. From what car did you take that opium?

A. Car 4066.

Q. Who told you who that car belonged to?

(Testimony of W. T. Stevenson.)

A. We had been working on the case for about a week or ten days.

Q. Where did you get your information as to whose car that was?

Mr. PATTERSON.—Objected to.

The COURT.—Objection sustained.

Q. Will you say that Kamihara didn't go down to the police station?

A. I will. He didn't go with us, but I didn't go to the police office at all. We didn't lock the men up at [501—421] the police station.

Q. He didn't come with you?

A. No, he didn't.

(Witness excused.)

**Testimony of William D. Allen, Jr., for Defendant
(Recalled).**

WILLIAM D. ALLEN, Jr., recalled as a witness for the defendant, having heretofore been duly sworn, testified as follows:

Direct Examination (Continued).

(By Mr. ULRICH.)

(Witness produces tins.)

Q. Are these just the way they were taken from the automobile?

A. Just the way they were taken from the machine.

Q. Haven't you any with wrappers?

A. Some that I have here are the same, with white wrappers.

(Testimony of William D. Allen, Jr.)

Q. That one is white. (Indicating.) You don't know whether it is opium or not?

A. I know one of them is molasses, I am positive that one of them is molasses. This is molasses. (Indicating.)

Q. You haven't made a sufficient test? Have you opened any? A. Just as I show you, four.

Q. Are those all molasses?

A. I could not say. I don't think it is pure opium.

Q. You think it has been diluted?

A. It don't seem to be smoking opium; maybe some [502—422] other composition in there. I don't know.

Q. You don't know what is contained except in this one?

Mr. PATTERSON.—Objected to. Mr. Allen has not been qualified as an expert in regard to opium.

The COURT.—He has already stated that he doesn't know.

A. I cannot say, the only one I tested was molasses.

(Witness excused.) [503—423]

REBUTTAL.

**Testimony of En You Kan, for the Government
(In Rebuttal).**

EN YOU KAN, was called and duly sworn as a witness for the Government in rebuttal, and testified as follows:

Direct Examination.

(By Mr. PATTERSON.)

Q. What is your name? A. En You Kan.

Q. What is your business? A. Police officer.

Q. City and county of Honolulu? A. Yes.

Q. Were you such on the 18th day of October, 1922? You were a police officer on the 18th day of October, 1922? A. Yes.

Q. Do you know Chin Tai? A. I know him.

Q. Do you know this woman here?

A. Yes, I do.

Q. You have seen her before?

A. Just that night.

Q. Did you see Ching Tai that night?

A. I have.

Q. Were you on duty that night?

A. I was on duty.

Q. What was your particular duty?

A. Why I was,—I am a sergeant.

Q. What was your duty that night?

A. Why my duty was up at the station.

Q. Did you see Ching Tai that night? [504—424]

A. I have.

Q. About what time?

(Testimony of En You Kan.)

A. Why I could not state what particular time.

Q. What time did you go on duty?

A. I went on at 10:40, and I usually get through writing along about usually 11:20. I was through writing when he came.

Q. How did he come?

A. He came on an automobile.

Q. What did he do?

A. He jumped off the automobile and approached me, and asked me where Mr. McDuffie was.

Q. What did you tell him?

A. I told him Mr. McDuffie has gone home, he leaves at 11 o'clock.

Q. It was after 11 then?

A. It must be after 11 o'clock.

Q. You don't know exactly what time it was?

A. No.

Q. You remember him coming there and asking for McDuffie? A. Yes.

Q. What did he do then?

A. He got on an automobile and drove away.

Q. Where were you standing at that time?

A. I was standing in front of the station.

Q. Did you see him again that night?

A. Later on, yes. [505—425]

Q. How much later?

A. Why, it was about 1 o'clock.

Q. Was that the time the woman and Lee Choy were booked? You know the defendant here, Lee Choy, don't you? A. Yes, I did.

(Testimony of En You Kan.)

Q. And were they booked at the time you saw him the second time?

A. They were about to be booked, I think, when I saw him the second time.

Q. He was with them at that time?

A. Yes, sir.

Cross-examination.

(By Mr. ULRICH.)

Q. Mr. Kan, you have seen Chin Tai down there at the police station a good many times, haven't you? A. You mean other times?

Q. Yes. A. Yes, I have.

Q. He comes in quite frequently, doesn't he?

A. Yes.

Q. Now I want you to think very carefully and say if you can whether or not you might not be mistaken about his having been there that particular night twice, instead of some other particular night. Are you absolutely positive?

A. I am positive that he been there twice that night.

Q. You say you went on duty there at what time? [506—426] A. At 10:40.

Q. And then you had some writing?

A. Yes, sir.

Q. And you had finished your writing when you saw him, is that right? A. Yes.

Q. Now you didn't look at the clock when you saw him did you? You were not inside? You were outside, standing out in the doorway there some place? A. In the doorway.

(Testimony of En You Kan.)

Q. You didn't look at the clock just before he left or before he came? A. No.

Q. Did you make any note of the time? When you say it was 11:20 you fix that as the time when you usually finish your writing? A. Yes.

Q. And you finished your writing? A. I had.

Q. It was then sometime after 11:20. Now you don't know just how long it was after that, do you?

A. I do not.

Q. You have no very definite idea as to just whether it was before 12 or after 12, have you?

A. I have not any idea.

Q. All that you know is that it was after you had finished your writing you were standing outside there? [507—427] A. Yes.

Q. It may have been somewhat later? A. Yes.

Q. How was Chin Tai dressed when you saw him there at that time?

A. Well, I could not just say, but he never dressed any out of the ordinary.

Q. You don't remember anything in particular about his dress? A. No.

Q. Do you know Yee Yap? A. I know Yee Yap.

Q. Are you sure it was not Yee Yap? You don't know anything that recalls his appearance of him that goes through your mind now? A. I do not.

Q. Can you remember anybody else that called there that night before these people were arrested?

A. Why there was a witness up here, William Hart, another police officer.

Q. Any other civilians, any person from the out-

(Testimony of En You Kan.)

side, who were in there? A. I don't remember.

Q. You cannot remember. Were there other people who called?

A. Only when the party was brought in.

Q. Aside from that party, the people who called at your station there before one o'clock, can you recall [508—428] any other single person who came there? A. No.

Q. There were other people who came there, weren't there?

A. There might have been, but I don't remember any of them.

Q. Chin Tai, he is the only one that stands out in your memory? A. Yes, sir.

Q. When was it that you first called to mind the fact that Chin Tai had been there, as you have said, that night? A. I do not understand.

Q. You do not understand. You have testified that you seen Chin Tai there after you finished your writing that night.

The COURT.—When did you first remember the fact, yesterday or immediately after, or this morning?

A. Oh, the other day when I was called up to Mr. Carden's office.

Q. Who else have you talked to besides Mr. Carden in the matter? A. Nothing, no one.

Q. Mr. Patterson?

A. Talked to Mr. Patterson.

Q. Have you talked to any Chinese, any of the Chinese people in this case at all? [509—429]

(Testimony of En You Kan.)

A. I have.

Q. Did you ever tell anybody that at the time you thought you saw Chin Tai there was between 12 and 1 o'clock? A. Never.

Q. Never told anybody that? A. No.

Q. After Chin Tai had gone away on this first trip did you stay in front of the police station for awhile?

Mr. PATTERSON.—Did he stay there for awhile?

Redirect Examination by Mr. PATTERSON.

A. I believe I stood there for awhile.

Q. Did you notice anything going on?

A. Why I heard a rumpus at Merchant and Fort Street, a number of cars there; I heard a noise, someone talking loud.

Q. How long was that after Chin Tai had been there?

A. Why, I could not tell just how long it was.

Q. To the best of your recollection?

A. Well, it was quite awhile after, just how many minutes I can't tell.

Q. Was it ten or fifteen minutes, five minutes, or what was it?

A. I could not just state, it was maybe 20, maybe 40 minutes.

Q. you can't say, you just remember the incident, but don't remember how many minutes it was?
[510—430]

A. No.

Q. Mr. Chin Tai came back the second time, and

(Testimony of En You Kan.)

when he came back the second time you remembered him as being there before that night?

A. Just once before.

Q. You are positive of that? A. Yes.

Q. When he went away the second time you got in the automobile? A. The second time?

Q. When he went away the first time he got in the automobile again? A. Yes.

Q. Did you notice anyone else in the automobile?

A. I didn't notice anyone else.

Recross-examination.

(By Mr. ULRICH.)

Q. You say between the time you saw Chin Tai and the time of this rumpus it may have been 20 or 30 or possibly 40 minutes, is that right?

A. Yes.

Q. You can't tell just exactly?

A. No, I can't tell exactly.

(Witness excused.) [511—431]

Testimony of S. Matsuda, for the Government (In Rebuttal).

S. MATSUDA, was called and duly sworn as a witness for the Government in rebuttal, and testified as follows: (Through the official Japanese Interpreter, H. Miki).

Direct Examination.

(By Mr. PATTERSON.)

Q. Your name is S. Matsuda? A. Yes.

Q. You were arrested the night before last for having opium in your automobile, were you not?

(Testimony of S. Matsuda.)

A. Yes.

Q. These men (indicating) were down there when you were arrested? A. Yes.

Q. Do you know these men? A. Yes.

Q. Do you know Mr. Wells? A. Yes.

Q. They are the two men who arrested you?

The COURT.—Does he know Mr. Wells?

A. I met him for the first time that night.

Q. Do you know Lee Choy? A. I do.

Q. How long have you known him?

A. About five months.

Q. Do you know a relative of his by the name of Lee Chuck?

A. I don't know his name, but I think he is his uncle.

Q. He is a fat Chinaman up there at Ah Chew Brothers, isn't he? [512—432]

A. Yes, that is the one, I know him.

Q. Lee Choy is employed by him? A. Yes.

Q. Now you remember the night of the 18th of October? A. I do.

Q. Now since that time have you seen Lee Choy and his employer? A. I did.

Q. And where did you see him?

A. The first time since I seen it was in the front of that store on Fort Street, there I saw him and Lee Choy.

Q. What did he say to you?

A. I was going to my stand from my home. He saw my car and he stopped me and he asked me how much it was for that ride the other night and he paid me the money.

(Testimony of S. Matsuda.)

Q. How much did he pay you?

A. Three dollars.

Q. Did he say anything else?

A. He said at the time when this case comes up for trial, "You might be asked to appear as a witness."

Q. Did he say anything else? A. That was all.

Q. Did you see him after that? A. I did, yes.

Q. Where? A. He sent for me from the store.

Q. Did you go over to his place? [513—433]

A. I did.

Q. And who was there?

A. Lee Chuck and Lee Choy.

Q. Was there anything said at that time?

A. Lee Choy then asked me if I would become a witness.

Q. What did you say? A. I said, "All right."

Q. What did he say?

A. He said to testify this way, then this man Lee Chuck made a suggestion to me that I went down to Kaneohe.

Mr. ULRICH.—I am going to object. Of course this witness may say anything. I object to anything that was said here between or by anyone not a party to this cause, not a witness in this case. This is something that Lee Chuck said after the thing is all over.

The COURT.—Was he present?

Q. Was Lee Choy present when this conversation was going on?

(Testimony of S. Matsuda.)

The COURT.—Was the defendant present at the time of that conversation you have just referred to? A. Yes, he was there.

Mr. ULRICH.—I do not understand that any conversation, anything said by anybody at all, in the presence of the defendant, is admissible for that reason. To let this witness go ahead and testify to facts which apparently are going to charge Lee Chuck with subordination—

The COURT.—Something said against me in my presence is always admissible. Objection overruled. [514—434]

Mr. ULRICH.—We take an exception.

A. I said, “All right.” Then to that Lee Choy said that Matsuda doesn’t know Kaneohe very well, it is not feasible. Then they both talked in Chinese; I could not understand. Then Lee Choy said, “I will meet you again and make arrangements accordingly.”

Q. Was that the end of this meeting?

A. Then Lee Chuck added this much—

The COURT.—The defendant was still present?

A. He was,—that all expenses will be paid, that I am to appear as a witness.

Q. What did he mean by saying that?

The INTERPRETER.—I am translating that.

Q. Whom does he mean, himself or Lee Chuck?

A. That refers to me.

Q. Did you see Lee Choy after that?

A. Yes, he called me to the store again.

Q. Who was present this time?

(Testimony of S. Matsuda.)

A. The both of them?

Q. What happened this time?

A. At that time Lee Choy requested me to testify to this effect, that I was sent for from the store at the corner of Hotel and Maunakea, that he, Lee Choy, got on the car there, and that I drove him along Hotel, down Richards Street, around the beach road, in front of pier 7, then up Fort and near the Bank of Hawaii, that I had met the car of Kamihara.

Q. What did you tell him? [515—435]

A. Then I said, "Why, I probably have to appear as a witness for Mr. Kamihara."

Q. What did he say?

A. Then Lee Chuck said that there would not be anything done against myself or against this fellow Kamihara, and requested me to appear as a witness.

Q. Then what happened?

A. Lee Choy, and of course Lee Chuck, both made a statement like that. Then Lee Choy said, "I will show you the store at the corner of Maunakea and Hotel, and the directions taken."

Q. What did you do then?

A. Then we drove down to the corner of Hotel and Maunakea and they got off, then they both went to this store. I was sitting in the car. Then he said to go to the attorney's office and make that statement to the attorney, then I went to the attorney's office with the defendant and there a fat Chinaman said to me that I must say that I was

(Testimony of S. Matsuda.)

sent for to this store, corner Maunakea and Hotel, that I drove the car along Hotel down Richard, along the beach road and up Fort.

Q. Then what?

A. I made that statement. And that he and Lee Choy got on the car of Kamihara at this place there on Fort Street.

Q. Did you go up to the attorney's office? [516—436] A. I did.

Q. Did you tell them this story that Lee Choy told you to tell them? A. I did.

Q. Were you telling the truth or were you telling that story false? A. That is false.

Q. Where is your stand?

A. River and Vineyard.

Q. And is Kamihara on that stand too?

A. Yes.

Q. How many other cars?

A. Three besides us two.

Q. That is 5 altogether? A. Five.

Q. Who owns that stand?

A. I don't know the owner of that stand, but I know the Chinese working in the store at the corner of Hotel and Nuuanu comes there to collect the rent.

Q. Does he collect rent from each of the drivers separately?

A. We all pay for the stand fifty-five dollars a month.

Q. Do you pay it in one lump sum?

A. We gather it together and pay it in one lump.

(Testimony of S. Matsuda.)

Q. Do you do this separately?

A. Separately, yes.

Q. And split on the expenses, is that correct?
[517—437]

A. Yes, we share and share equally the expenses.

Q. As far as the income is concerned, each man puts what he gets in his pocket? A. Yes.

Q. What is the number of your car? A. 4066.

Q. Did you see Lee Choy on the 18th of October, 1922? A. I did.

Q. Where did you first see him on that night?

A. At the corner of Nuuanu and School.

Q. How did you happen to go there?

A. A telephone message came.

Q. Do you know who from? In compliance with that telephone message where did you go?

A. I went to the corner of Nuuanu and School.

Q. Who did you see there, if anybody?

A. Lee Choy was standing in the road and waiting.

Q. Did he say anything?

A. He got on my car and said turn my car around.

Q. Do you know what time this was?

A. It was in the neighborhood of 11 o'clock.

Q. You are not positive as to the minute?

A. I am not.

Q. But it was around 11 o'clock?

A. Yes, about 11 o'clock.

Q. And when you got on the car what did you tell him to do? [518—438]

(Testimony of S. Matsuda.)

A. And he said, "I think Kamihara was arrested. I am looking for Kamihara."

Q. What else did he say?

A. Then he told me to drive straight down Nuuanu Street. Then when nearing Kukui Street he told me to drive into Kukui and drive west.

Q. And from there where did you go?

A. Then when the car got near the old Athletic Park he told me to drive into the lane there. When I got into the lane just a short distance he ordered me to stop.

Q. And what did you do?

A. He got off the car.

Q. Did you notice where he went to?

A. He got off my car, walked around and toward the back of my car and went into the small lane between two buildings.

Q. What did you do while he was in there?

A. I was sitting in the car waiting.

Q. How long? A. Probably five minutes.

Q. Did he come back? A. He did.

Q. Get on the car? A. Yes.

Q. Where did you go from there?

A. He said, "Turn the car around." [519—439]

Q. Where did you go?

A. Then I drove my car up to Kukui and along Kukui toward Liliha.

Q. Where did you go?

A. Then I drove my car along Liliha and when it got to School Street he said, "Turn into School toward ewa side."

(Testimony of S. Matsuda.)

Q. Where did you go?

A. Then after driving my car probably 200 feet away from the corner of Liliha and School he told me to stop my car, then he got off the car.

Q. Where did he go? A. He went into a house.

Q. On what street? A. On School Street.

Q. How long was he in there?

A. Probably ten minutes.

Q. Who came out then? A. He did.

Q. Where did you go from there?

A. Then he got on the car, the car turned around, and drove along School Street toward Nuuanu Street.

Q. Where did you go?

A. Then he told me, drive up Nuuanu, then he told me to go in Quong Tong Lane.

Q. Did you go in there? A. I did. [520—440]

Q. What did you do in there?

A. I went in there because he told me to go in there.

Q. Did he do anything in there?

A. He jumped off my car.

Q. Do you know where he went to?

A. I do.

Q. Where did he go?

A. At the time he jumped off the car there he told me to go in the back and turn my car and come here; I noticed him going on the verandah of a building.

Q. Did you turn around?

A. When I brought my car to this house, after

(Testimony of S. Matsuda.)

turning to the lane there, he was standing in front of this house.

Q. And what happened then?

A. Then he got on the car and said for me to drive down Nuuanu Street.

Q. Where did you go?

A. Then we went down as far as King Street and he said, "Go along King toward ewa side." Then when I got to the junction of Beretania and King he told me to stop, then he got off the car. Then after getting off the car he said to me, "I want you to go to the police station and see if Kamihara's car is there or not."

Q. What did you do?

A. I went to look for Kamihara's car, but as there was no Kamihara's car there so I returned to the same point. [521—441]

Q. From there where did you go?

A. Then he got on the car and he ordered my car to be turned, and he said he was going down to the police station, then we both drove down toward the police station to see if Kamihara's car was there or not.

Q. You went back again? A. Yes, I did.

Q. Did you stop down there?

A. I did not, we simply passed.

Q. Where did you go from there?

A. Then he asked me if I knew Kamihara's home. I said "Yes." Then he told me to go there. Then I drove the car to Kamihara's place.

Q. Was Kamihara there?

(Testimony of S. Matsuda.)

A. We went to Kamihara's garage, but as Kamihara's car was not in the garage we came back.

Q. Came back where?

A. Then we came as far as, back as far as River Street, then we turned up River Street mauka, then turned on Vineyard Street, toward Liliha, then up Liliha. Then we went to the former place and he told me to stop at that point.

Q. Which former place? A. On School Street.

Q. What do you mean by saying that was the former place? A. I told you I went there before.

Q. When you got there what did you do?

A. Lee Choy got off the car. [522—442]

Q. And where did you go?

A. He went into the house.

Q. And where did you go; what happened then?

A. I waited there.

Q. Did he come out again?

A. I must have waited there about 30 minutes or a little over 30 minutes, then Lee Choy and another fat Chinese they both came out of this house.

Q. Do you know this fat Chinaman's name?

A. I don't know his name, that is the first time I saw him.

Q. What did they do?

A. They both got on the car. Then I was ordered to go down to the police station.

Q. Did you go down there? A. I did.

Q. What happened?

A. We went down to the police station, and then

(Testimony of S. Matsuda.)

the fat Chinese, the one that got on the car at School Street, he got off my car.

(Recess.)

Q. When he got off your car what did he do?

A. Then this fellow got off the car and walked in the back way of the car, and I noticed the sergeant sitting in the back seat of the police station.

Q. What did he do?

A. He had a talk with this officer. [523—443]

Q. What did he do then?

A. Then he came back and got into the car, then Lee Choy said go down to pier 7.

Q. Do you know this fat sergeant?

A. I know him by sight.

Q. You do not know his name?

A. I don't know.

Q. Did you ever talk to him?

A. I have not.

Q. And then you went down to pier 7, you say?

A. I was told to go down to pier 7.

Q. Did anything happen down there?

A. Before we, when we got in front of pier 7, I noticed Kamihara's car, before we got there. Then Lee Choy said turn the car around.

Q. When you noticed Kamihara's car did you say anything?

A. Just when I noticed the car I said, "That is Kamihara's car."

Q. You said that, did you? A. I did.

Q. What did you do with respect to Kamihara's car? What did you do with respect to Kamihara's

(Testimony of S. Matsuda.)

car, did you stop or anything down there, go in front of it or behind it or where?

A. Kamihara's car was already in motion in front of pier 7. Then I called out, "That is Kamihara's car." [524—444] Then I was told to turn my car around and follow Kamihara's car.

Q. Did you do that? A. I did.

Q. Which way did you follow him?

A. That roadway in front of pier 7, right along that road, along Fort, then I went up Fort, then near the Bank of Hawaii my car caught up, I was in the same position as Kamihara's car, then someone called out, "Stop."

Q. Then what did you do?

A. Then Kamihara's car turned into Merchant Street and stopped, then I went and stopped my car in front of Kamihara's car.

Q. Then what happened?

A. Then the men came to where my car was, I don't know who he is, then the other Chinese who was in my car got off the car and Lee Choy was the only man that was sitting in my car. At that time a man came over with a searchlight and flashed the light; looked into my car, and noticed Lee Choy.

Q. Are you a married man?

A. I am married, yes.

Q. How old are you? A. Twenty-two.

Q. Have you any children? A. One.

Q. How old is it? [525—445]

A. Born on the 9th of this month.

(Testimony of S. Matsuda.)

Cross-examination.

(By Mr. ULRICH.)

Q. Matsuda, how long have you known Kami-hara? A. About three months, I think.

Q. You have been on the same auto stand with him for that time, have you?

A. He has been on the stand for three months. When I say I knew him three months, he has been on the stand for three months; I known him previous to this time.

Q. How long have you known him previous to this time? A. About a year.

Q. You speak English, don't you?

A. Some, yes.

Q. I would like to give the jury an opportunity to see how well this man speaks English. Answer me in English.

(Interpreter speaks to witness.)

Q. When was it that Lee Choy spoke to you after this night of October 18th about testifying? When was the first time?

(No response.)

The COURT.—The first time he spoke to you after the 18th?

A. (Speaking in English.) Asked me?

The COURT.—The first time Lee Choy spoke to you after the 18th, when was it and where was it?

A. I don't know the date. [526—446]

Q. Was it two or three days after the 18th, a week, a month, or how long after the 18th?

A. I think about after two weeks.

(Testimony of S. Matsuda.)

Q. About two weeks after? And where was it?

A. On Fort Street.

Q. Whereabouts on Fort Street?

A. Between School and Vineyard Street.

Q. You have been locked up, have you not, since the night before last? You have been under arrest since the night before last, been in jail?

A. (No response.)

The COURT.—You have been under arrest, locked up, since the night before last? A. Yes.

Q. You have gone over this matter very much at length, talked it over with Mr. Patterson here?

A. (No response.)

The COURT.—Have you talked with Mr. Patterson, the lawyer sitting there (indicating), have you talked to him about this?

A. Talked to him about what?

Q. About this case, about what you are going to testify here? A. Yes, I talked to him.

Q. You have told him what you are going to say here, is that right?

The COURT.—Did you tell him what you are going to say here in court? [527—447]

A. Yes.

Q. Has Mr. Patterson or anybody else said anything to you about what would or would not be done to you in connection with this opium deal, which you were arrested for, if you testified in this case? A. He did not.

Q. Nobody has told you that it was going to go easier with you if you gave this testimony?

(Testimony of S. Matsuda.)

A. (Through Interpreter.) He did not say that.

Q. Have you talked to Kamihara about this case?

A. You mean this case? A. Yes.

A. I did, Kamihara requested me to tell the truth.

Q. Kamihara didn't tell you where to say you went with this automobile that night, did he? Kamihara didn't instruct you what to say, where you went with this automobile? A. He did not.

Q. Kamihara didn't tell you about this house over by the Athletic Park, did he?

A. He did not.

Q. Kamihara didn't tell you about the house up on the lane off Nuuanu Street, did he, where you say you took Lee Choy that night?

A. He didn't say anything.

Q. Do you know Mrs. Alapa?

A. I don't know her.

Q. Have you seen a woman sitting here this morning? [528—448]

A. Yes, I have seen her. The first time I saw her was that night when the arrest took place.

Q. You do not know where she lived?

A. I did not.

Q. Never saw her driving around with Kamihara? A. I have not seen her.

Q. Kamihara never talked to you about her, told you anything about her?

A. He had not said anything to me.

Q. Now then about two weeks after the night that you say that you took Lee Choy on this ride

(Testimony of S. Matsuda.)

that you have been telling us about, you say that you met Lee Choy on Fort Street. You were in your automobile, I believe you said, and he stopped you and said he wanted to talk to you, is that right? A. He did, yes.

Q. Where did you say that you went on Fort Street? A. In front of the store.

Q. This woman that I have been talking about, you never saw her in your life until the night that you were stopped and the arrest was made on Fort and Merchant Street, is that right?

A. I have not seen her until that night of the 18th.

Q. You never knew anything about her? Never knew about her? A. I have not.

Q. Now just where on Fort Street was this again? [529—449]

A. About midway between School and Vineyard.

Q. At about what time of the day was it?

A. Early in the evening.

Q. Well, was it dark or light? A. It was dark.

Q. You were just driving along the street there, and Lee Choy called out from the sidewalk, is that right? A. He stopped me.

Q. Anybody in your car? A. No one.

Q. What kind of a car do you drive?

A. Studebaker.

Q. You pulled up alongside the curb there, did you?

A. On the other side of the store, on the opposite side of the store.

(Testimony of S. Matsuda.)

Q. What store? A. Lee Chuck's store.

Q. Ah Chew Brothers store, you mean?

A. Yes.

Q. Was anybody there who could have overheard what was said? A. I didn't see anybody.

Q. Just you and Lee Choy are the only people who know what was said there, is that right?

A. Yes.

Q. What did you say that Lee Choy said to you?

A. He asked me what was the fare of the other night's [530—450] ride.

Q. And you told him three dollars?

A. I said three dollars.

Q. And he paid you three dollars, did he?

A. Yes, he paid me, he gave me a five dollar bill and I gave him two dollars in change.

Q. He said that you might be wanted as a witness in this case, is that right?

A. Yes. He requested me to be a witness.

Q. He didn't say anything about the evidence or testimony, simply said he would like to have you as a witness?

A. He never said that at that time.

Q. Simply that he would want you for a witness, that is all?

A. He says that I may be asked to become a witness for him, then he says that if I would appear as a witness. That is all that was said on that occasion.

Q. That is all that was said at that time?

A. Yes.

(Testimony of S. Matsuda.)

Q. And then when was it that you next saw Lee Choy?

A. I could not say exactly how long it was after.

Q. As near as you can remember, two or three days or a week?

A. Probably a week or six days.

Q. That would be about three weeks then after the night of the 18th?

A. I could not say exactly. I could not remember the [531—451] dates

Q. What time of day was it you saw him the second time?

A. It was during the day-time, whether the forenoon or afternoon or the evening, I could not say.

Q. You have no idea whether it was morning or afternoon or early in the morning or late in the afternoon? A. I have no recollection.

Q. Where did you see him?

A. He sent for me to the store.

Q. You mean he telephoned for you?

A. He did.

Q. Called you up at your stand?

A. When I was on the stand he called me.

Q. You went over to Ah Chew Brother's store?

A. I did.

Q. You went inside the store? A. I did.

Q. You left your car standing outside? A. Yes.

Q. A lot of clerks around in there, were there?

A. I think there was one or two, I could not say exactly.

Q. Do you know what day of the week it was?

(Testimony of S. Matsuda.)

A. I have no remembrance.

Q. Well, would you say that there were one or two clerks? [532—452]

A. I could not say exactly how many, one or two, but in the office there were Lee Chuck and Lee Choy waiting for me.

Q. Had you ever been in Ah Chew Brothers' store before? A. Yes, I have, many a times.

Q. How often had you been in the habit of going to Ah Chew Brothers store?

A. Oh, sometimes I was sent two or three times a week.

Q. Two or three times a week?

A. Whenever there is a steamer he generally sends for me.

Q. Who does?

A. When the store sends for me, the boss, Lee Chuck used to call me up.

Q. You have been in the habit of going inside the store on these occasions or waiting outside for him? A. I was sitting in the car waiting.

Q. Had you ever been inside the store there before? A. Yes, I have.

Q. How often had you been inside the store there? A. I could not say.

Q. Would you know a single one of those clerks, if we were to bring them up and show them to you?

A. I know that man sitting over there on the other side of Lee Choy.

Q. Was he there that day?

(Testimony of S. Matsuda.)

A. You mean the time I was sent for? [533—453]

Q. The time you were in there to see Lee Choy and Lee Chuck on the 18th?

A. I didn't see him.

Q. Well, do you know any other clerk in there?

A. I do.

Q. What other clerks do you know?

A. I know a fat Chinaman there.

Q. You would know him if you saw him, would you? A. Yes.

Q. There was a fat Chinaman there that day?

A. Yes. He was not ~~there~~ that time. I know another one.

Q. Who is he?

A. There is another one there, slim, tall fellow.

Q. Was the slim, tall fellow there that day?

A. I didn't notice him around there.

Q. Do you know any more?

Mr. PATTERSON.—Objected to upon the grounds it has been asked and answered; taking up too much time.

The COURT.—Objection overruled.

A. I don't know.

Q. You don't know any other? A. No.

Q. Of the one or two, or two or three Chinese you saw in there that day they are all Chinese that you don't know, is that right?

A. I don't know which one.

Q. Aside from Lee Choy and Lee Chuck you

(Testimony of S. Matsuda.)

could not [534—454] identify a single man who was in there that afternoon, could you?

A. I can't say.

Q. Was there any customers in there?

A. I didn't notice any.

Q. When you went in who did you first speak to?

A. Lee Chuck spoke to me first, said sit down.

Q. He was in the back in the office. Didn't you speak to anybody going through the store?

A. Lee Choy said, "Come in."

Q. Where did you see Lee Choy, was he back in the rear or up in the front?

A. He was in the office.

Q. That is in the rear part of the store, isn't it?

A. It is within the store premises.

Q. It is in the rear of the building, back of the rear of the building?

A. It was in the corner, back corner.

Q. You went in there, and went right through the store and when you came in Lee Choy called out to you, "Come out in here" or something like that?

A. While I was in the car there he called out to me, "Come in."

Q. He called out from the office to you while you were out in the car? A. He did.

Q. How far is it from the car to where he was in the office? [535—455]

A. From where I am sitting up to the doorway.

Q. How were you dressed, so that we can see whether anybody saw you around there or not?

(Testimony of S. Matsuda.)

A. I had on the same coat I have on now, but as to the trousers I don't remember what I had on.

The COURT.—Did you have on the same shirt?

A. I cannot say whether that is the same shirt I had on or not.

Q. And you have no idea of the time of day it was? A. I cannot.

Q. All right. You went in there and went into the inside office, the back, rear of the store there, where Lee Choy and Lee Chuck were sitting, is that right? A. I did.

Q. And you passed these clerks on your way in?

A. Yes.

Q. When you got in there who was the first one to say anything?

A. When I got in there I said, "Hello" and Lee Chuck spoke to me.

Q. What did he say? A. "Hello, how are you?"

Q. What else?

A. And he said "Sit down,"—offered me a chair.

Q. Go on.

A. I sat down. He said to me, "This boy here is working in this store for a long time, he got mixed up [536—456] in a case, probably you might be asked to appear as a witness." I said, "All right."

Q. Is that the occasion when Lee Chuck is supposed to have told you or asked you to testify that you had taken Lee Choy down to Kaneohe?

A. That was the day, yes, Lee Chuck said that

(Testimony of S. Matsuda.)

if I would make the statement that I went down to Kaneohe with Lee Choy.

Q. Did he ask you if you would make the statement, or ask you if you would swear under oath as a witness that you went down to Kaneohe?

A. Well, he made that statement, whether that statement was made to me or this other man I could not say.

Q. I am asking you what the statement was, did he say to you that he wanted you to say that you had gone to Kaneohe or that you had testified under oath that you had gone to Kaneohe in the case?

The COURT.—Tell us just as near as you can what the conversation was.

A. Lee Chuck said this: “How is it we make it so that Matsuda went down to Kaneohe?” then Lee Choy said, “No, Matsuda doesn’t know very much about Kaneohe.”

Q. Lee Chuck said how would it be if we said that Lee Choy went down to Kaneohe? A. Yes.

Q. Before any suggestion of perjury or anything of [537—457] that sort was made, was anything said to you about what was going to be done for you if you committed the crime of perjury yourself?

A. He said that if I would appear as a witness here all my expenses would be paid, if Lee Choy does not pay that he would pay it, and that there would not be any trouble for me.

Q. Pay your expenses, all your expenses, that is

(Testimony of S. Matsuda.)

the only inducement that was given you for committing the crime of perjury?

A. Well, he said that all the expenses such as hiring the car and other expenses that might be required in regard to this case.

Q. How long had you known Lee Chuck before he laid himself open to this?

A. Four or five months.

Q. What had been your relations by which he should have had such an extreme confidence in you. What kind of dealings did you have with him?

A. Well, there is nothing between us, except that he used my car.

Q. Have you ever had any business dealings with him of any kind? A. I have not.

Q. Just took you off the street as a rent driver and suggested perjury to you, did he? [538—458]

A. He did; yes, sir.

Q. Well, when Lee Choy or Lee Chuck suggested this story to you about going to Kaneohe what did you say to that?

A. I did not make any answer to that; afterwards this man here (indicating defendant) said to me, "Why we will make arrangements in the near future."

Q. Well, after Lee Choy had said that you didn't know very much about Kaneohe, then he said, "We will make arrangements in the future," is that all that was said?

A. There was no other conversation, but he requested.

(Testimony of S. Matsuda.)

Q. Requested you to what?

A. If I am called as a witness to assist him.

Q. No indication of how you were going to assist him, having decided that you were not going to have a trip to Kaneohe?

A. Nothing was said at that time.

Q. Lee Choy was the man who called you on the telephone?

A. I think it was him, but I am not positive.

Q. Lee Choy was the man who said that they could not use you for that Kaneohe story, then they did not talk about anything else, is that right?

A. There was no conversation except what I have stated here. Of course they had conversation among themselves in Chinese, which I could not understand.

Q. After you got through there you went away. Did [539—459] you see anybody at all you know who saw you go away?

A. I think there was one man.

Q. Who was that man?

A. I have no recollection of him.

Q. There was no one, no one you can remember to identify? A. No.

Q. After that conversation with Lee Choy when did you next see him?

A. Then I was sent again up to this store, he telephoned me.

Q. He telephoned to you a second time?

A. Yes.

Q. How long after the first time?

(Testimony of S. Matsuda.)

A. Three or four days.

Q. Have you any idea what time of day it was that time? A. I have no idea.

Q. You don't know whether it was early in the morning or late in the afternoon?

A. It was about midday, I think.

Q. When you were over there that time, aside from Lee Choy and Lee Chuck, did you see anybody that you knew?

A. Yes, there were some in there.

Q. How many were there besides Lee Choy and Lee Chuck?

A. I think there were two. [540—460]

Q. Do you know who either of them were?

A. I don't know.

Q. Where were Lee Choy and Lee Chuck that time? A. They were in the office.

Q. Who is the one who opened the conversation that time?

A. Lee Chuck opened the conversation.

Q. What did he say?

A. He said, "Sit down." Then Lee Chuck spoke to me, "I picked them up at the corner of Maunakea and Hotel and drove down Hotel, down Richard to pier 7 and up Fort."

Q. Lee Chuck said to you that you were to say that, that you were to testify you mean?

A. Lee Choy is the one that said that.

Q. Lee Choy said to you, "Matsuda, you testify in court that you got me at Maunakea and Hotel

(Testimony of S. Matsuda.)

and went up Hotel, down Maunakea'' and so forth, is that right? A. Not Alakea, but Richard.

Q. Lee Choy said to you that you were to testify that way, is that right? A. Yes.

Q. And did you agree to testify that way?

A. Well, I said Kamihara being on my stand, he is Japanese, being on the same stand, I don't think it is right for me to testify that way.

Q. You didn't say the reason why you don't think it [541—461] was right to testify that way because Kamihara was a Japanese on the same stand?

A. Yes.

Q. It didn't worry you particularly that that wasn't the truth, and that you would be committing perjury if you testified that way, is that right?

A. I didn't think of that.

Q. And when finally Lee Choy said to you that nothing would be done to Kamihara and nothing would be done to you, you agreed to perjury, to perjure yourself, is that right?

A. Of course Lee Choy said there would not be anything against me, or against Kamihara and wanted me to testify the way I have already stated.

Q. And you agreed to testify that way?

A. I said, "Yes, I would."

Q. You intended to really testify that way, didn't you?

A. I could not say one way or the other.

Q. And you had no greater inducement offered to you at that time than that your expenses were going to be paid, is that right?

(Testimony of S. Matsuda.)

A. That is what they said.

Q. At the present time you are under arrest, aren't you? A. Yes.

Q. You feel yourself pretty much in the power of the [542—462] prosecuting attorney here, don't you?

A. I don't think so I am in his power; but it is right for me to make a true statement.

Q. You know very well that he would be very glad to have you testify against Lee Choy?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—I think the question is proper.

A. As to that I don't know.

Q. After having agreed to commit perjury for expense money he took you out to show you the place where you are supposed to have picked him up at, is that right?

A. Yes, that is the day he got on my car and took me over.

Q. Did Lee Chuck go with you?

A. He did not, only Lee Choy.

Q. Where was this place he took you to?

A. To the corner of Maunakea and Hotel.

Q. You had never been there before?

A. I may have been there before buying something.

Q. Do you know whether you had been to that store before, or not? A. I have not.

Q. You had never seen the fat Chinaman you told

(Testimony of S. Matsuda.)

us about before that night that you took him in your automobile? [543—463]

A. I have not.

Q. Well, after going down and showing this store and explaining the story you were supposed to tell, what did you do?

A. Took me down there, the car was stopped in front of this store and he got off the car.

Q. You mean he left you there?

A. He got on the car afterwards.

Q. He went in the store?

A. No, he did not go, he went and stood in front of the store.

Q. On that drive through the public streets of Honolulu that day, and while stopping in front of the store, while with Lee Choy that afternoon, did you see any single person you can remember who knows whether you were with him or not?

A. I didn't see anybody that I know of.

Q. And after you stood in front of the store what did he do—after he had stood in front of the store there, what happened then?

A. There was another man standing in front of the store, and they were both talking.

Q. He was talking to another man? A. Yes.

Q. Have you seen that man since that time?

A. I don't know who he is.

Q. Was he a fat man, the fat man that you talked about? A. He was not a fat man. [544—464]

Q. Well, after you talked to this man what happened? A. Then he got on to my car.

(Testimony of S. Matsuda.)

Q. And then what did you do?

A. He told me to go down to the attorney's office.

Q. And did you go to the attorney's office?

A. I did.

Q. The same day? A. Yes.

Q. Did you go with him; did you go together?

A. Yes, he came along with me.

Q. And what time of the day was it?

A. I could not remember.

Q. Who did you see at the attorney's office?

A. We went upstairs.

Q. Who did you see, what person?

A. There was one white man there I saw.

Q. Did you see him in the courtroom, is he in in the courtroom here now?

A. Yes, he is over there sitting down.

Q. Mr. Flint, the gentleman sitting at the end of the table? A. Yes, he is the man.

Q. Was there a stenographer there?

A. Yes, she was sent for.

Q. And he asked you questions and you answered them and she took them down in shorthand?

A. Yes, I noticed her writing.

Q. And in answering those questions that Mr. Flint put [545—465] to you that day you were lying, were you? A. Yes.

Q. Then you simply answered those questions and went away, is that right? A. Yes.

Q. You told him that night you went down Hotel

(Testimony of S. Matsuda.)

Street, down Richard Street, along the waterfront, and back up Fort Street? A. I did.

Q. All right. When did you next see Lee Choy?

A. After that Lee Choy and this Chinese sitting alongside of Lee Choy came to my stand.

Q. And what happened?

A. Then Lee Choy requested me to go to the attorney's office.

Q. That was how long after the first time?

A. I could not say how long after.

Q. Well, as near as you can remember?

A. Probably a week.

Q. And at that time I believe you saw me, didn't you? A. Yes, saw you.

Q. And I started to ask you questions?

A. Yes, you asked me questions.

Q. And you told me,—first you refused to talk in English, rather you seemed to be unable to talk in English, didn't you?

A. Well, I said that I could not speak very well, [546—466] that is what I said.

Q. And I got our Japanese interpreter to come in and interpret for you?

A. Yes, she acted as interpreter.

Q. And then when I started to ask you questions you commenced to give this other story—another story from the story you told Mr. Flint?

A. I made a statement which was true.

Q. You made a statement which was different from the statement you made to Mr. Flint, didn't you? A. Yes, different statement.

(Testimony of S. Matsuda.)

Q. And I only asked you two or three questions about what you did that night, didn't it?

A. Yes, you asked me two or three questions, and afterwards you made this remark, "Why is it that you are changing your statement now, your statement before are different," then you threatened me that if I told lies I will go to jail.

Q. I told you you better be very careful about telling the truth or you would go to jail for perjury, if you told lies, that is what I told you? A. Yes.

Q. I told you you had made two statements in that office, one of which was bound to be a lie, didn't I? A. I didn't hear that.

Q. And I told you that—then I told you in substance [547—467] that it was impossible,—I told you you had come into our office one time telling us one story and come into the office another time and told us another story, and that you were bound to be lying, and we could not use you as a witness?

Mr. PATTERSON.—Objected to.

The COURT.—Objection overruled.

A. Well, I understand it this way, "Why is it that the first statement and the statement made to-day are different? What is the matter?"

Q. I asked you whether or not it was not a fact that Kamihara had been talking this thing over with you since you had been in our office the first time, is that so?

A. You didn't make such a statement.

Q. I didn't ask you whether you had been talking

(Testimony of S. Matsuda.)

to Kamihara, and whether Kamihara had been talking this thing in court with you since you had been to our office the first time?

A. I didn't hear you say that, but I heard Lee Choy speaking to you that probably I was bought by Kamihara.

Q. And in response to a question of mine as to whether you had been talking to Kamihara or Kamihara had been suggesting this story to you, didn't you say that you had been talking to Kamihara, that he was on your stand and that you had been talking to him right along about this? [548—468]

A. I think I said that I never talked to Kamihara.

Q. Well, was that true or was it false, when you said it?

A. I didn't have any talk with him; that is the truth.

Q. Before you came in the office and saw me that day you hadn't talked to Kamihara about this case, is that true?

A. We never said anything about the case in detail, except that Kamihara said that he was going to testify to the truth, and I said I will testify to the truth.

Q. The only conversation when the case came up, each of you made to the other, "We will testify about the truth"? A. Yes, that is about all.

Q. All through the negotiations that took place between you and Lee Choy and Lee Chuck relative

(Testimony of S. Matsuda.)

to procuring your perjured testimony, no greater inducement was made to you than to pay your expense money, is that right?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

Q. Answer the question.

A. Yes, only the expenses.

Q. Now then on the night of October 18th,—

Mr. PATTERSON.—This man Susiki is here, the witness [549—469] counsel wanted to get, is here, and I would suggest counsel at this time put him on. I do not think we can finish with this witness to-day. I would suggest counsel finish up his case in order that he may be able to rest.

Mr. ULRICH.—I do not care to call him.

Mr. PATTERSON.—You rest, Mr. Ulrich?

Mr. ULRICH.—Yes.

The COURT.—Let the record show that the defendant rests.

Mr. ULRICH.—Q. (Resuming.) On the night of October 18th Lee Choy called you at your stand, did he?

A. Someone called me up; I don't know who it was.

Q. About what time did that someone call you up?

A. Just a few moments after or before eleven o'clock.

Q. Well, now, how do you know it was a few minutes before or a few minutes after?

A. I can say that from this, that I had taken

(Testimony of S. Matsuda.)

out a passenger and then returned to my stand, when I got back to my stand it was half-past ten. I looked at my watch there, it was sometime after that this telephone message came.

Q. Who was this passenger you took out?

A. I don't know who he was.

Q. A white man or Japanese or what?

A. Japanese.

Q. Where did you take him to? [550—470]

A. I remember taking a passenger out, as to where I could not say that.

Q. You don't know where you took him?

A. I have no recollection.

Q. How did you happen to notice the time particularly when you came back from the passenger?

A. Because I looked at the time.

Q. The only thing you remember about that whole trip with the passenger was the time you got back from the trip, you don't remember who the passenger was or what was done on the trip that night? A. I remember the time, yes.

Q. It was some time after half-past ten, you fixed it, a few minutes before 11 that this telephone call came to you?

A. I think it was a few minutes after or before eleven o'clock.

Q. Did you answer the telephone yourself?

A. I did.

Q. Did they ask for you by name or just for an automobile?

A. When I took the telephone the man on the

(Testimony of S. Matsuda.)

other side, or the person on the other side, said to have a car up to the corner of Nuuanu and School.

Q. And you went down?

A. Another chauffeur was there, a man by the name of Ogawa. [551—471]

Q. You mean he was on the stand when you left or was down there at the corner—

A. The telephone message came and I took the telephone, and so someone ordered the car to the corner of School and Nuuanu, and a man by the name of Ogawa was on the stand, it was his turn, and I spoke to him to go and he was putting his shoes on when a friend made an appearance and he told me to go.

Q. That Ogawa is a man who has been arrested too?

Mr. PATTERSON.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Objection sustained. I don't think it has anything to do in the case.

(Exception.)

Q. And when you got down to School and Nuuanu Street you found Lee Choy standing there?

A. He was standing, yes.

Q. Anybody else around there that you knew?

A. I didn't see anyone.

Q. And he got into your automobile and told you to go where?

A. He said go down Nuuanu Street, he said, "Go down Nuuanu."

(Testimony of S. Matsuda.)

Q. Now then what time was it, as near as you can remember, when you left the corner of School and Nuuanu Street with Lee Choy?

A. It was around a little after 11, as soon as I can [552—472] after the telephone I drove up there.

Q. Would you say it was as late as 15 minutes after 11?

A. It would not take that long to get up there.

Q. And where did you go from Nuuanu Street?

A. He told me to go down Nuuanu. I drove down Nuuanu.

Q. Where to?

A. Then we got down near Kukui, and he says turn Kukui.

Q. Then tell me the various streets you turned on. Tell me where was the first place you stopped?

A. The first stop we made was in the lane at the Athletic Park.

Q. And you had never been there before?

A. I passed there many a time, but I have not stopped my car.

Q. Has anybody told you who lives in there?

A. Where?

Q. Where you stopped there, where Lee Choy lived? A. I didn't hear.

Q. How long did you stay there?

A. About five minutes.

Q. Then what did Lee Choy do?

A. He got off the car.

Q. Did he go inside any house?

(Testimony of S. Matsuda.)

A. I didn't see him go into the house.

Q. Did you see him go into the lane?

A. Yes, I saw him go into the lane. [553—473]

Q. And this would be some—about what time, when you got up there?

A. I could not say the exact time, but it was shortly after I took them on the car there at the corner of Nuuanu and School.

Q. Have you any idea how many minutes it takes you to go from where you picked him up to where you stopped there?

A. Well, going in an ordinary speed, probably four minutes or five minutes.

Q. Would you say it was 11:15 when you got there? A. I didn't look at the time.

Q. Judging from the time you left the automobile stand, I want you to fix the time when you got out there as near as you can?

The COURT.—Your best judgment.

A. Probably 7, probably between 5 and 7 minutes.

Q. Between 5 and 7 minutes after 11, is that what he said? A. I could not say.

Q. Well, that is your best judgment given us a moment ago, wasn't it? A. Yes.

Q. Has Kamihara taken you out to that place since that time? A. He did not.

Q. You haven't been out there, is that it? [554—474] A. I have not.

Q. After Lee Choy had been in there about 5 minutes, or three or four minutes, he came out again, did he? A. He did.

(Testimony of S. Matsuda.)

Q. And then where did you go?

A. Then he got on the car and told me to turn the car around, got into Kukui Street, along Liliha, into School.

Q. Then where was the next place you stopped?

A. On School Street.

Q. On School and Liliha?

A. Some distance away from the corner of School and Liliha, toward ewa.

Q. Now then, how long do you think it took you to get over there, from where you had been?

A. I could not say.

Q. It was only a matter of two or three minutes; not very far, is it?

A. Yes, I think you can make it in two or three minutes.

Q. So that if you arrived at this place at Athletic Park in five to seven minutes after 11, and he stayed in there three or four minutes, probably four minutes, you would have arrived over at this second place at about fifteen minutes after 11?

A. Yes, about that time, but I didn't look at the [555—475] watch.

Q. Well, what happened at this second place?

A. He got off the car and went to her house.

Q. Lee Choy went into her house? A. He did.

Q. How long did he stay?

A. Probably 10 or 15 minutes.

Q. You waited out in the car? A. Yes.

Q. Did you see anybody you knew?

A. I didn't see anyone.

(Testimony of S. Matsuda.)

Q. Or anyone that you know now, that you are able to identify? A. I didn't see anyone.

Q. Well, after he had been in there about ten or fifteen minutes he came out? A. Yes.

Q. Anybody come with him?

A. No, he came alone.

Q. And then where did you go?

A. I turned the car off, and drove along School, then up Nuuanu.

Q. You must have left there about eleven twenty-five or eleven thirty? A. I could not exactly say.

Q. Anyway he stayed in there about ten or fifteen minutes? [556—476] A. Yes.

Q. Now then, when you started out again where was the next place you stopped, that is the third stop you made?

A. The third stop was Quong Tong Lane.

Q. You drove in the lane and went back and turned around while he got out and went back on the porch, I believe you said?

A. Yes, I saw him going on the porch.

Q. You had never been in there before?

A. I had not.

Q. You don't know whether he lived in that house? A. I don't know.

Q. How long did he stay up on the porch; what did he do up there?

A. I don't know what he was doing.

Q. What did you see him do, did he just go up on the porch and stand there?

A. He told me to go into the lane and turn my

(Testimony of S. Matsuda.)

car around, and of course my car was moving slowly at the time.

Q. You didn't see where he went except he went up on the porch?

A. I simply noticed him going on to the veranda there.

Q. When you came back after turning your car around, did you see him? [557—477]

A. When I turned my car around and came back he was already waiting for me in front of this house.

Q. He got on and you went away?

A. And we went down Nuuanu Street.

Q. Kamihara had never taken you in that lane there? A. No.

Q. And never told you about anybody that lived in that lane? A. He did not.

Q. You just know it as Quong Tong lane but you have never been in it?

A. Oh, I know that lane there, Quong Tong lane there, I have taken some passengers to that lane there before.

Q. What passengers have you taken to that lane?

A. I don't know, I don't remember.

Q. How long before this had you taken any passengers in that lane?

A. Oh, sometime ago I think I took Chinese.

(Jury admonished.)

(Adjourned to 9 o'clock A. M. Monday, November 20, 1922.) [558—478]

(Testimony of S. Matsuda.)

In the District Court of the United States in and
for the Territory of Hawaii.

UNITED STATES OF AMERICA

vs.

LEE CHOY,

Defendant.

On Monday, November 20, 1922, at 9 o'clock
A. M., all parties to this action being present as
before, the following further proceedings were had
and testimony taken:

(Jury all present.)

S. MATSUDA, resumed the stand, and continued
his testimony as follows:

Cross-examination (Continued).

(By Mr. ULRICH.)

Q. Matsuda, after you had made the stop at
Quong Tong Lane, the third stop that you made,
in riding around that night, just tell us without
going into the road travelled or anything like that,
the other times that you stopped your machine be-
fore the arrest was made on Fort and Merchant
Street?

A. After leaving Quong Tong Lane I stopped at
the junction of King and Beretania at Kamihara's
place, then again at School near Liliha, then in
front of [559—479] the police station, then on
Merchant Street.

Q. And that was where the arrest took place?

(Testimony of S. Matsuda.)

A. Yes.

Q. Now, at none of these places did you stop more than a few minutes, no long stop anywhere?

A. The longest stop that I made was on School Street, we must have stayed there between 30 and 40 minutes. I did not notice Lee Choy coming up, because I was taking a little nap.

Q. That was the only long stop that you made?

A. The others were short, yes.

Q. Matsuda, the other night when you were arrested, that night, this opium was taken from your automobile, is that right? A. Yes.

Q. Isn't it a fact Matsuda that you and Ogawa, who was also arrested, and Kamihara, have been engaged in the joint enterprise for sometime, handling opium? A. No, sir.

Q. Do you not know that Kamihara has himself gotten opium off the steamboats before this, sometimes using other people to get it off, sometimes getting it off in other ways?

A. I have not seen him do that, not once.

Mr. PATTERSON.—I ask that the jury be instructed to disregard these questions of counsel.

Mr. ULRICH.—I am entitled to go into that.

The COURT.—I think I have already sufficiently instructed [560—480] the jury that the mere question of counsel is not evidence.

Q. And you still say you have never heard Kamihara speak about using these women for smuggling opium, or this woman, Mrs. Alapa?

A. I have not heard that.

(Testimony of S. Matsuda.)

Q. You have never even seen her driving in his automobile? A. I did not see her.

Redirect Examination.

(By Mr. PATTERSON.)

Q. Matsuda, how long ago was it when you first talked to me about this case?

A. I could not say exactly; it was a little over two weeks ago.

Q. Was it before you were arrested for having opium in your car? A. It was.

Q. Did you tell me the same story then as you have told on the witness-stand to-day?

A. Yes, the same.

Q. At that time you were not arrested or threatened with arrest, were you? A. I was not.

Q. Where is your automobile?

A. In the hands of the Government.

Q. Now, where is this automobile stand,—where is your [561—481] automobile stand?

A. On Vineyard Street.

Q. Vineyard and what? A. Near River.

Q. Do you know where Lee Choy lives?

A. I don't know where his residence is to-day, but at the time when he got on my car he was staying on Cunha Lane, cottage Number 4.

Q. What street does Cunha Lane open into?

A. On Vineyard Street.

Q. How far is that opening from your automobile stand? A. About 100 feet.

(Testimony of S. Matsuda.)

Q. Does Lee Choy go in and out of there almost every day, when he was living there?

A. I did not see him every day, but I have seen him go.

Recross-examination.

(By Mr. ULRICH.)

Q. At the time you first talked to Mr. Patterson, at the time you first told this story you have told on the witness-stand, you say you had not before that time talked to Kamihara about this matter, or gone over with him your testimony in this case?

A. I have not.

(Witness excused.) [562—482]

SURREBUTTAL.

Testimony of Lee Chuck, for Defendant (In Surrebuttal).

LEE CHUCK, called as a witness for the defendant in surrebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ULRICH.)

Q. What is your name?

A. My name is Lee Chuck.

Q. And you are one of the members of the firm of Ah Chew Brothers, are you not? A. Yes.

Q. And you have your place of business on Fort Street here in Honolulu? A. Yes.

Q. Grocery commission business? A. Yes.

Q. How many years have you been in business here in Hawaii?

(Testimony of Lee Chuck.)

A. About forty years, pretty near forty years I have been doing business; I think I have been doing business about 35, something like that.

Q. Do you know this Japanese here, Matsuda?

A. Yes.

Q. Have you ever used his automobile to drive around in? A. Sometimes.

Q. Mr. Lee Chuck, I am going to ask you whether or not at any time or at any place you have ever talked with [563—483] this man Matsuda about this case of Lee Choy's in any aspect at all?

A. I don't have anything to talk to that gentleman, not talked to anybody at all about Lee Choy's case, even you, his attorney. I never went down to visit with you or have any talk with you, with nobody.

Q. Have you been very careful to keep out of the case entirely.

A. I have kept out of the cases entirely.

Q. You have business with these boats here, have you not? A. Yes.

Q. Lee Choy was in your employ before his arrest, was he not? A. Yes.

Q. What did you do when he was arrested?

A. When they arrested I don't know they arrested,—I think arrested about Wednesday evening, and I think they got out on Saturday afternoon, Saturday afternoon, I think, between 2 and 3 P. M. Well, Murray and Mr. Taylor, as soon as Lee Choy—brought him down to my office. I see Lee Choy.

(Testimony of Lee Chuck.)

Mr. PATTERSON.—Objected to, as this is not in the nature of surrebuttal.

Mr. ULRICH.—I want to prove he has discharged Lee Choy and will not re-employ him.

Q. Isn't it a fact that when you learned of Lee Choy's having been arrested for opium that you discharged [564—484] him? A. Yes.

Q. And that you have given him to understand that he will not be re-employed unless he is cleared of this charge? Is that right?

A. As soon as I saw Lee Choy in an automobile in the store, coming back to the custom-house here, I say, "What doing Lee Choy on Saturday night, arrested do you?" and he says, "Yes."

Mr. PATTERSON.—Objected to as hearsay testimony.

Q. What did you give him to understand when you discharged him as to re-employment?

A. "Oh, well, how much I owe you?" I pay him off. "If you get out, or he plead guilty, if you been guilty—"

Mr. PATTERSON.—Objected to.

The COURT.—He discharged him. That will answer the purposes.

Mr. ULRICH.—If he is going to say if not guilty he would employ him back—

Q. Now, Lee Chuck, did you have any talk at all on Lee Choy's case,—did you have any conversation at all with this man Matsuda and Lee Choy together in the office in your store? A. No.

(Testimony of Lee Chuck.)

Q. And you never had any conversation about this place at any place or at any time? A. No.
[565—485]

Q. No.

Cross-examination.

(By Mr. PATTERSON.)

Q. Mr. Lee Chuck, have you got any interest in this case?

A. I got,—I couldn't have it because Mr. Ulrich on Friday afternoon I say I got nothing to do with the case entirely, have nothing to do with it at all. Mr. Ulrich said, "You have to go, you will have to go up there and tell them the truth," and I say, "Why I have nothing in the case at all."

The COURT.—Have you any interest in the result of this case? You have no interest in it have you? A. No.

Q. You do not care whether it is won or lost?

A. No.

Q. You do not care anything about it? A. No.

Q. You have no greater interest in it than a man who lives in Alaska, isn't that correct? A. No.

Q. You know Mr. Taylor, don't you?

A. Yes, I do.

Q. You get your license to go on and off these boats from the United States Government officials, don't you? A. Yes.

Q. In order to sell your produce on these boats you have to get a permit from them to go on and off, don't [566—486] you?

(Testimony of Lee Chuck.)

A. I don't understand that very well. You mean I know Mr. Taylor and get license from Mr. Taylor, or get permit from him?

Q. We will call it a permit. This is the permit to go on there and sell your produce, isn't that what it is for? A. Yes.

Q. They are pretty careful who they give those to? A. Yes.

Q. If they believe a man is after opium they are careful? A. I suppose.

Q. They don't give a man a permit to go on there and take opium off the boats?

A. That part I don't know, we never deal with anything like that.

Q. Do you know Chin Tai? A. Yes, I do.

Q. How long have you known him?

A. Chin Tai,—let us see, I think it is over ten years.

Q. You used to be in business with him?

A. Ten years ago.

Q. You and he were partners?

A. Ten years ago.

Q. Ten years ago you were partners? A. Yes.

[567—487]

Q. You know Lee Choy, don't you? A. Yes.

Q. How long have you known him?

A. I have known him ever since he was born.

Q. Do you know his father? A. Yes.

Q. What was his father's name?

A. His father was Ah Chew.

(Testimony of Lee Chuck.)

Q. Your brother? A. Yes.

Q. In other words, your brother is the father of this defendant, isn't he? A. Yes.

Q. That is true, isn't it? A. Yes.

Q. Lee Choy's brother is working down there in his place there now, isn't he? A. Yes.

Q. Driving the truck for you? A. Yes.

Q. Still you have no interest in this case, have you? A. I have got no interest in this case.

(Witness excused.)

Testimony of Lee Choy, in His Own Behalf (In Surrebuttal).

LEE CHOY, the defendant, recalled as a witness in surrebuttal, testified as follows: [568—488]
(Through the official Chinese Interpreter.)

Direct Examination.

(By Mr. ULRICH.)

Q. Lee Choy, you heard Matsuda testify as to a certain conversation that was supposed to have taken place before you and— I will withdraw that. You have heard Matsuda testify as to a conversation or several conversations that is supposed to have taken place between yourself and him, some of which were in the presence of Lee Chuck, and in which Lee Chuck participated, in which you are supposed to have suggested things which he was supposed to have testified to. Did you ever have any conversation with Matsuda as to this case except to go and ask him to see your lawyers and tell them his story?

(Testimony of Lee Choy.)

A. I only told him to come down to see my lawyer.

Q. Before he came to see your lawyer did you talk to him at all as to what he was to testify to, or suggest anything at all what he was to testify to?

A. No, I did not suggest what to testify. I just told him to go down and see my lawyer, and tell the truth. One of my friends went down with him.

Q. You have heard the rest of his testimony, the story about travelling around down there with you that night, going various places, I will ask you whether that story is true or false?

A. It is not true.

(Witness excused.)

Mr. ULRICH.—Defendant rests.

Mr. PATTERSON.—The prosecution rests.
[569—489]

(Recess from 9:25 A. M. to 9:50 A. M.)

(Mr. Patterson makes opening argument for the prosecution.)

(Mr. Ulrich makes his argument on behalf of the defendant.)

(Recess from 11:25 to 11:32 A. M.)

(Mr. Patterson makes his closing argument.)
[570—490]

(Charge to the Jury.)

The COURT.—Gentlemen of the Jury: The indictment in this case is in two counts.

The first count charges that the defendant on

or about the 18th day of October, 1922, at and within the Territory and District of Hawaii, did unlawfully, fraudulently, knowingly, and feloniously receive, conceal, buy, sell and facilitate the transportation, concealment and sale of, after having been imported and brought into the United States, a certain narcotic drug, said narcotic drug then and there being a derivative and preparation of opium, to wit, twenty 5-tael tins of opium, all of which said narcotic drug as he, the said Lee Choy, then and there well knew had been theretofore unlawfully imported and brought into the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

The second count charges that the defendant on or about the 18th day of October, 1922, at and within the said district, did knowingly, unlawfully, fraudulently and feloniously purchase, sell, dispense and distribute twenty 5-tael tins of opium from packages to which there was not then and there affixed the tax-paid stamp required by law, which said opium then and there was a compound, manufacture, salt, derivative and preparation of [571—491] opium and was so purchased, sold, dispensed and distributed by the said Lee Choy, as aforesaid, not then and there being in the original stamped package and not being then and there taken from an original stamped package; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

In this connection, I instruct you, gentlemen of the jury, that the only offenses with which the defendant is charged in this case, and the only offenses of which it is legally possible for you to find him guilty, are the offenses charged and set forth in counts one and two of the indictment which I have just read to you. There is no charge made against the defendant in this case for in any way dealing with any other opium; as for example, the opium which the prosecuting witness, Mrs. Alapa, testified that she carried from the boat on her first trip on the night of October the 18th. And I further instruct you, gentlemen of the jury, in this connection, that the evidence concerning the first lot of opium which the prosecuting witness testified that she brought ashore from the steamer "President Wilson" was admitted in evidence solely as bearing upon the probability or improbability of the defendant having received, concealed, bought, sold or facilitated the [572—492] transportation, concealment, or sale, after importation, of the particular twenty 5-tael tins of opium received in evidence in this case, and also as bearing upon the probability or improbability of his having purchased, sold, dispensed, or distributed, those particular twenty 5-tael tins of opium without having had affixed to them the tax stamp required by law.

And, further in this connection, I instruct you that since May 26, 1922, it has been unlawful to fraudulently or knowingly receive, conceal, buy, sell or in any manner to facilitate the transporta-

tion, concealment, or sale, after unlawful importation of opium, knowing the same to have been imported contrary to law.

INSTRUCTION No. 2.

I instruct you, gentlemen of the jury, that the defendant in this case is not charged with having unlawfully imported or smuggled opium into the United States, but only with having unlawfully received, concealed, bought, sold and facilitated the transportation, concealment and sale of opium after it had already been unlawfully imported and brought into the United States, and, therefore, unless you find from the evidence that as a matter of fact this defendant did receive, or did conceal, or did buy, or did sell, or did facilitate the transportation, concealment or sale of this [573—493] particular opium after and not before it had been imported and brought into the United States, then you must find the defendant not guilty of the offense charged in count one of the indictment.

INSTRUCTION No. 3.

I further instruct you, gentlemen of the jury, that the defendant is charged in count two of the indictment of having actually purchased, sold and dispensed and distributed the particular twenty five-tael tins of opium in evidence in this case, and unless you can find from the evidence that, as a matter of fact, at the time of his arrest and of the finding of the indictment against him, he had actually purchased, sold, dispensed or distributed that particular opium which is in evidence in this case, then you must find the defendant not guilty

of the offense so charged in said count two of the indictment.

INSTRUCTION No. 4.

You are instructed that if you believe from the evidence beyond a reasonable doubt that the defendant on or about the 18th day of October, 1922, within the District and Territory of Hawaii, did fraudulently or knowingly receive, conceal, buy, sell or facilitate the transportation or concealment after importation of any quantity of smoking opium or opium prepared for smoking and which opium the defendant then and there knew to be smoking opium or opium prepared for [574—494] smoking, and then and there knew had been imported contrary to law, you should find the defendant guilty of count one.

INSTRUCTION No. 5.

You are instructed that if you find from the evidence beyond a reasonable doubt that the United States has proved that the defendant was in the actual possession of twenty five-tael tins of opium in the manner and form as charged in count two of the indictment and that there were no tax-paid stamps on the containers of said opium, that such facts taken by themselves shall be presumptive evidence of the violation of the act and on this evidence alone you are authorized to find the defendant guilty unless by some other evidence in the case or some other facts or circumstances in the case have raised in your minds a reasonable doubt as to whether or not the said possession by the defendant was lawful.

INSTRUCTION No. 6.

The word "possession" may mean either the conscious having, holding or detaining of property in one's power or control, and may refer to one's own property or to the property of another, and may be either permanent or temporary possession. The word "possession" is not limited to manual touch or personal custody. [575—495]

In this connection I charge you that if you find and believe from the evidence beyond a reasonable doubt that the defendant and Eunis G. Alapa were acting together and in concert in the acts as charged against the defendant in the indictment, then, irrespective of the individual acts, or either in the transaction, such individual acts would be the acts of each and both of them. The actual possession therefore of the said Eunis G. Alapa of the opium in question, if you so find that she had such actual possession, would be the possession of the defendant Lee Choy.

INSTRUCTION No. 7.

You are instructed that the statute under which this defendant is charged in count one of the indictment provides that when on trial for its violation, the defendant is shown to have, or to have had, possession of the said opium, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury. In this connection you are instructed that if the defendant has been shown to have been in possession of opium beyond a reasonable doubt, then it becomes

incumbent upon him, to show that his possession was lawful or innocent; in other words, the United States must show beyond a reasonable [576—496] doubt, possession by defendant and that the thing possessed was such opium and defendant had knowledge thereof; but when such possession by the defendant of such opium is so shown, then, as the terms of the statute provide, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain his possession to the satisfaction of the jury or, unless in the evidence somewhere, whether introduced by or in behalf of the Government, or in the circumstances appearing in the evidence, or in the nature of the possession itself, there is a satisfactory explanation or a satisfactory accounting for such possession—such an accounting or explanation made by the defendant or by the testimony in the case, as raises in your minds a reasonable doubt of the defendant's guilt.

INSTRUCTION No. 8.

It is incumbent upon the United States to establish the guilt of the defendant of the offense charged in the indictment, to the exclusion of every reasonable doubt in the mind of each of you before you can return a verdict of guilty. The minds of each and all of you must concur in your verdict, and if any one of you has a reasonable doubt of the defendant's guilt, you cannot convict. [577—497]

INSTRUCTION No. 9.

Gentlemen of the jury, you will observe from the reading of the indictment in this case, as

also from the reading of the first instruction which I have read to you, that the defendant is charged with the commission of various unlawful acts in relation to opium, which acts are separately and appropriately alleged, according to the nature of the charge, either in the first or in the second of the two counts of the indictment; and in this connection, the Court instructs you that before you can find the defendant guilty of either of the said counts it will be necessary for you to find and believe from the evidence that each and every single material element of at least one of the alleged unlawful acts charged in the count under consideration by you have been proven by the evidence beyond all reasonable doubt; and if you entertain a reasonable doubt as to the proof of any single material element of each and all of the alleged unlawful acts charged in the count under consideration by you, then you must find the defendant not guilty of that count. But if you do find and believe from the evidence that each and every single material element of at least one of the alleged unlawful acts charged in the count under consideration by you have been proven by the evidence beyond all reasonable doubt, then you should find the defendant guilty of that count. [578—498]

Having thus disposed of one count, you will then proceed in the same manner to consider the evidence as to the alleged unlawful acts charged in the other count and dispose of it according as the evidence may warrant.

INSTRUCTION No. 10.

Gentlemen of the jury, since there has been no testimony offered as to the previous character of the accused, you are instructed that a presumption of good character exists in his favor, and you are to consider this in determining your verdict.

INSTRUCTION No. 11.

You are instructed that counsel for the defendant has asked certain questions in this case in regard to the moral character of two of the witnesses for the prosecution. You are instructed that there has been no testimony admitted in this case to the effect that the witness Eunice G. Alapa was a prostitute and there has been no testimony admitted to the effect that Kamihara was a procurer for prostitutes and in this connection I specifically charge you that you are not in any way to take into consideration the question so asked by counsel to the effect that these two witnesses were such, or to infer anything therefrom derogatory to them.
[579—499]

INSTRUCTION No. 12.

I instruct you, gentlemen of the jury, that the witness, Mrs. Alapa, who has testified in this case, is a self-confessed accomplice in the commission of the crime as to which she has testified. You are instructed that an accomplice is not on that account incompetent as a witness. It is the settled rule in this country that an accomplice in the commission of a crime is a competent witness, and the Government has a right to use her as a witness. The testimony of an accomplice is, however, always to be

received with caution and weighed and scrutinized with great care by the jury; and you are not to convict upon such testimony alone, unless, after careful examination of such testimony, you are satisfied beyond a reasonable doubt of its truth. If you are so satisfied of the truth of such testimony and feel that you can safely rely upon it, even if not corroborated, it will then be your duty to convict.

INSTRUCTION No. 13.

You are instructed that you can find the defendant guilty of both counts; not guilty of both counts; or guilty of one count and not guilty of the other count as you believe from the evidence and the instructions of the Court that a verdict is warranted.

INSTRUCTION No. 14.

Gentlemen of the jury, I charge you that if [580—500] the testimony in this case in its weight and effect be such as two conclusions can be reasonably drawn from it, the one favoring the defendant's innocence, and the other tending to establish his guilt, law, justice and humanity alike demand that the jury shall adopt the former, and find the accused not guilty.

INSTRUCTION No. 15.

The Court further instructs you, gentlemen of the jury, that the defendant has interposed in this case the defense of what is known in law as an alibi; that is, as he claims, that he was at another place at the time of the commission of the alleged crime, and therefore was not, and could not have been, the person who committed the crime charged.

All the evidence should be carefully considered by you, and, if the evidence on this subject, considered and compared with all the other evidence in the case, is sufficient to raise in your minds a reasonable doubt as to the guilt of the defendant, you should acquit him.

The defendant is not required to prove an alibi beyond a reasonable doubt, or even by a preponderance of evidence. It is sufficient to justify an acquittal if the evidence upon that question raises in your minds a reasonable doubt of his presence [581—501] at the time and place of the commission of the crime charged, if you find that a crime was committed. And you will understand, also, that the attempt of the defendant to prove an alibi does not shift the burden of proof from the prosecution, but that the prosecution is bound to prove beyond a reasonable doubt that the defendant was present at the place of the alleged crime at the time of its commission.

INSTRUCTION No. 16.

The Court further instructs you, gentlemen of the jury, that you are the exclusive judges of the facts, of the weight of the evidence, and of the credibility of the witnesses, in this case. It is also within your exclusive province to determine from the conduct, the manner and the appearance of the different witnesses on the witness-stand, their manner of testifying, their apparent candor or frankness, or the lack thereof, which witness or witnesses are more worthy of credit and to give weight accordingly.

In determining the weight to be given the testimony of the different witnesses you should take into consideration their interest, if any, in the result of this case, their temper, feeling, prejudice or bias, if any has been shown, their means and opportunity of information, their apparent [582—502] intelligence or lack of intelligence, and the probability or improbability of the truth of their several statements, and any and all other facts and circumstances in evidence, which, in your judgment, would add to or detract from their credibility or the weight of their testimony.

If you find and believe from the evidence in this case that any witness has intentionally, corruptly, wilfully, and knowingly sworn falsely to any material fact or essential element, in this case, then you have the right to reject the entire testimony of such witness or witnesses in matters where their testimony is not corroborated by other credible evidence, or by the facts and circumstances appearing in evidence.

INSTRUCTION No. 17.

The Court further instructs you, gentlemen of the jury, that the indictment in this case is of itself a mere formal accusation or charge against the defendant, and is not of itself any evidence of the guilt of the defendant. The burden of proof in this case is upon the United States, and the law, independent of the evidence, presumes the defendant to be innocent, and this presumption continues and attends him at every stage of the case until it has been overcome by evidence which proves

him guilty to your satisfaction and beyond a reasonable doubt. [583—503]

The term “reasonable doubt” as used in these instructions; does not mean a mere possible, imaginary or conjectural doubt, but an actual, substantial doubt of the defendant’s guilt arising from the evidence, or from a lack of evidence, in the case.

A reasonable doubt is that state of the case, which, after a full and fair consideration of all the evidence, both for the United States and for the defendant, leaves your minds in that condition that you cannot say that you feel an abiding conviction, amounting to a moral certainty, that the defendant is guilty. If you have such reasonable doubt as to the defendant’s guilt, you must acquit him; for it is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances, that the charge against the defendant is more likely to be true than the contrary; but the evidence must establish the truth of the charge to a reasonable and moral certainty—a certainty that convinces and directs your understanding and satisfies your reason and judgment—you being bound to act conscientiously upon such evidence. This we take to be proof beyond a reasonable doubt. If upon such proof you can say that you feel an abiding conviction, amounting to a moral certainty, that the defendant is guilty [584—504] as charged, then you are satisfied beyond a reasonable doubt, and you should convict him.

The bailiff will hand you a form of verdict. If you find him guilty you enter nothing in that blank;

if you find him not guilty you will write the word "no" in. That is to be signed by the foreman. I would suggest, as I had occasion to in the other case, that when you reach your jury-room you select from among your number a foreman, and proceed in a regular orderly manner and if any of the jury wishes to make any remarks that the others listen respectfully, and patiently. Remember that you should give each member close, patient, reasonable consideration and hearing. In that way you are going to reach a conclusion more readily and more satisfactorily, I think.

Mr. ULRICH.—We note an exception to the refusal of the Court and the giving by the Court, of prosecution's instructions Numbers 3, 5, 6, 7 and 17. These are as numbered by the Court, and the refusal to give defendant's requested instructions numbers 2, 5,—5 as numbered 2 of the other case,—6, 9, 8, 10 to 17 inclusive, 40 to 48.

The COURT.—So as to keep the record perfectly straight, the instructions given to the jury are each and all of them numbered by the Court, with a pencil at the top of the page. The instructions that the [585—505] Court refuses to give he places no number on them, merely writing the word "refused." The jury is not concerned with the instructions that are refused.

(Bailiffs sworn.)

(Jury taken to luncheon and upon return retire to jury-room.)

(Jury return verdict at 4:10 P. M.)

FOREMAN OF JURY.—Your Honor, in pre-

senting this verdict, the jury has requested me, if in order, to recommend leniency to the defendant.

(Verdict read by the Clerk.)

The COURT.—The verdict will be filed and made a part of the record in this case.

Mr. ULRICH.—We except to the verdict as contrary to the law and the evidence and the weight of the evidence and give notice of motion for a new trial.

The COURT.—The jury recommend leniency for the *Court* in their finding. You will be excused until 9 o'clock to-morrow morning.

Case closed.

I HEREBY CERTIFY the above and foregoing to be a full, true and correct transcript of my shorthand notes taken at the times and place aforesaid.

Honolulu, T. H., March 26, 1923.

R. N. LINN,
Official Reporter. [586—506]

In the United States District Court, for the Territory of Hawaii.

CRIMINAL—No. 3259.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
LEE CHOY,
Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court, for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 586, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the cause of United States of America, Plaintiff, vs. Lee Choy, Criminal Number 3259, as the same remains of record and on file in my office, and I further certify that I hereto annex the original transcript of testimony, two stipulations, three orders extending time and the original writ of error, original citation and U. S. Exhibit "C."

I further certify that the cost of the foregoing transcript of record is \$26.50/100, and that said amount has been paid by said plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12th day of June, A. D. 1923.

WM. L. ROSA,

Clerk U. S. District Court, Territory of Hawaii.
[587]

[Endorsed]: No. 4052. United States Circuit Court of Appeals for the Ninth Circuit. Lee Choy, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record.

Upon Writ of Error to the United States District
Court of the Territory of Hawaii.

Received June 25, 1923.

F. D. MONCKTON,
Clerk.

Filed July 5, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit. By Paul P. O'Brien,
Deputy Clerk.

